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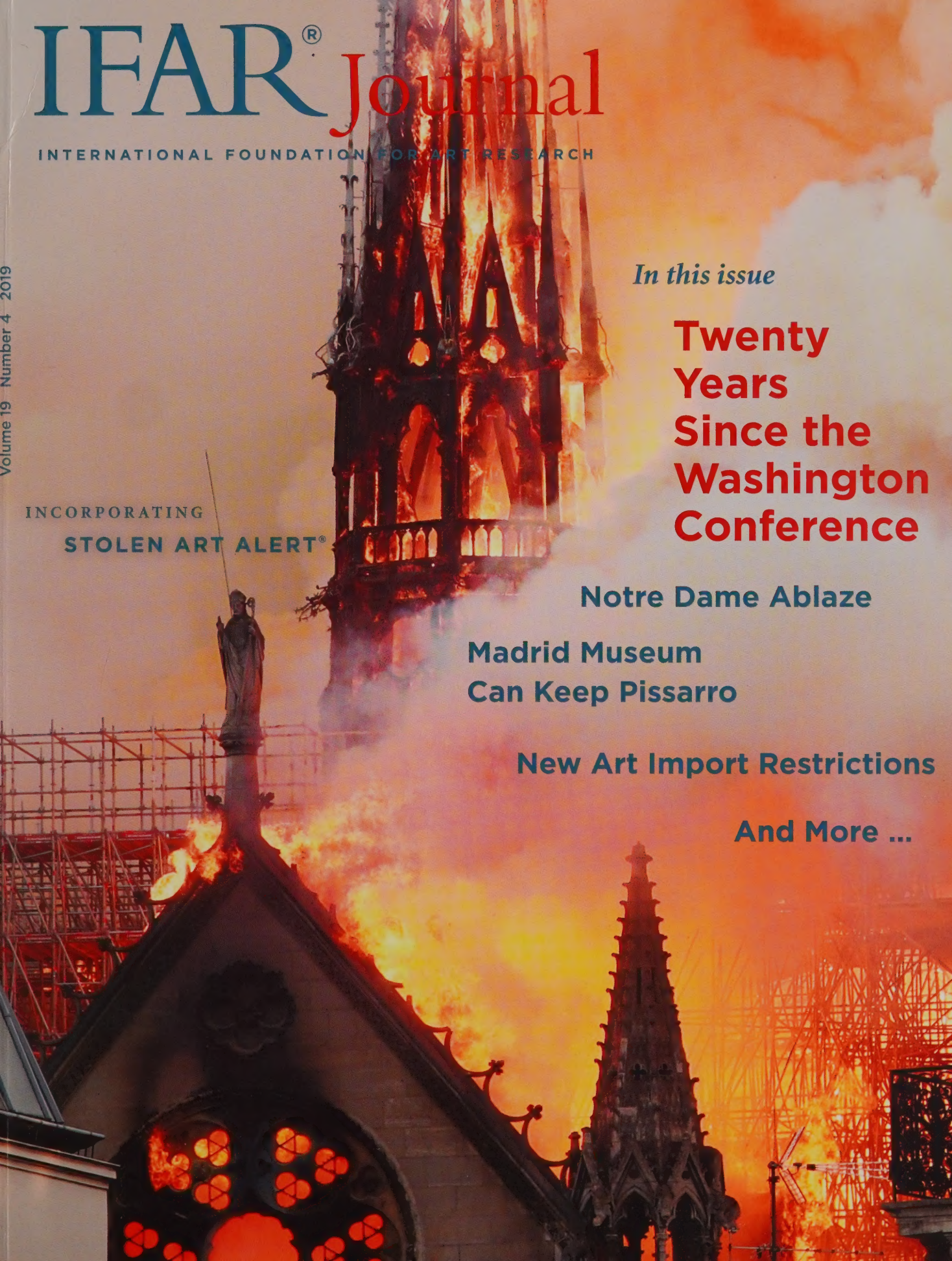

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EDITOR-IN-CHIEF: Sharon Flescher
EDITOR: Kathleen Ferguson
DESIGN: Alice Fisk MacKenzie

International Foundation for Art Research (IFAR)
500 Fifth Avenue, Suite 935, New York, NY 10110
Tel: (212) 391-6234 Fax: (212) 391-8794 www.ifar.org

EXECUTIVE DIRECTOR: Sharon Flescher
ASSISTANT TO THE DIRECTOR: Kathleen Ferguson
ART RESEARCH DIRECTOR: Lisa Duffy-Zeballos

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COVER: The burning spire of Notre Dame, April 15, 2019. Photo: Benoit Tessier, Reuters.

IN MEMORIAM

JOHN PATRICK RICHARDSON

1924–2019

SCHOLAR, AUTHOR, CONNOISSEUR, FRIEND
MEMBER, IFAR's BOARD of DIRECTORS, 1981–2010;
ART ADVISORY COUNCIL, 2010–2019

It is not an exaggeration to say that John Richardson was a giant in the art world. His passing on March 12, 2019 at the age of 95 is a great loss, one that we at IFAR feel in particular. John was a member of IFAR's Board of Directors from 1981 until 2010, when he moved to our Art Advisory Council, where he remained until his death. I, personally, will miss him greatly.

We called on him frequently, for many things, but particularly for his expertise on Pablo Picasso, for whom he was—and will remain—the definitive biographer. It was to John that we went whenever an inquiry about a purported Picasso would come in to our Art Authentication Research Service. A man of prodigious knowledge, with an extraordinary "eye" and strong opinions that he was not shy in voicing, often in colorful language, it was always informative and often amusing to hear his comments.

He had an incredible visual memory and more often than not, the work submitted as a "Picasso" was a copy or pastiche of an actual Picasso work that he had seen in person and recalled in infinite detail. Such was the case when a 1943 Picasso painting of Dora Maar was stolen from a New York City apartment and substituted with a copy, which was not immediately recognized as such. Later, when suspicions were aroused, the work was submitted to IFAR, which called on John. He not only recognized it immediately as a fake, he was familiar with the actual painting, as he had included it in a Picasso exhibition that he had organized many years earlier, in 1971. Whereas the original work, an oil painting on brown paper, "sizzled," the fake, an oil on canvas, was to him merely an inept copy, which, he said, was executed in a "slapdash, slipshod and clumsy manner." John was not one to mince words. These were some of the more printable ones he expressed over the years. He recalled vividly how in the authentic (stolen) painting, the brown paper support was left exposed in places; whereas, in the copy, the same areas were painted in a muddy tan color, in a failed imitation of the brown paper. He pointed out several other stylistic inconsistencies. This is only one of many examples of his insightful, forceful opinions — no wishy-washiness with him.

In 2009, John, together with Bernard Ruiz-Picasso, the artist's grandson, organized *Picasso Mosqueteros,* the first of six Picasso exhibitions he curated for the Gagosian Gallery in New York, to which he was a special advisor. *Mosqueteros* focused on late Picasso (1962–72), a particular passion of his. The ambitious exhibit was a runaway success, and it is not far-fetched to suggest that the

show almost single-handedly changed the market for Picasso's late works, whose prices jumped enormously. But for John, it wasn't the money; it was a passion. IFAR was privileged to have John lead a private visit of the exhibition for members of our Collectors' Roundtable. Intended to be an "intimate" visit, it was so popular that more people came than we were permitted, but John and the Gallery were most gracious in accommodating us. To this day, people still tell me how fabulous that visit was. (See *IFAR Journal,* Vol. 11, no. 2, 2009). In front of practically each work in the show, John would relate an anecdote about Picasso—a close friend of his—or Jacqueline, the artist's second wife. John was quite the raconteur. But he was also a great scholar and connoisseur, and he pointed out details in the works that most of us, a pretty sophisticated art group, would probably have missed. What a treat!

John Richardson speaking at IFAR's Collectors' Roundtable event in 2009 during the *Picasso Mosqueteros* exhibition.

Over his long life, John had many "careers," including contributing editor to *Vanity Fair* magazine. Notably, he also spent several years at Christie's, where he set up the New York office. But it was as Picasso's biographer for which he will most likely be remembered.

John died before publishing the fourth and final volume of his Picasso biography, although the research and writing are essentially complete. It will come out next year — a prodigious achievement, which I and, no doubt, all of John's admirers, as well as Picasso's, anxiously await.

Everything about John was larger than life, including his personality. I will miss his joie de vivre and his wonderful stories—he seemed to have known "everyone," not just Picasso, but Braque, Warhol—for whom he gave the eulogy at the funeral—Lucien Freud, and so many others.

IFAR will be hosting an *IFAR Evening* scholarly "tribute" to John on May 29, 2019. Diana Widmaier-Picasso another Picasso grandchild, will be among the speakers. It is the least we can do as a fond farewell to a luminary who had been with us for so long.

— SHARON FLESCHER
Executive Director, IFAR

• • •

LIGHT AT THE END OF THE SPIRE

DISASTROUS NOTRE DAME FIRE REVEALS INHERENT PROBLEMS AND GALVANIZES A STUNNED WORLD

AN *IFAR EVENING* WILL FOCUS ON THE DISASTER

Victor Hugo called the cathedral of Notre Dame "a monument in stone," and, indeed, it has stood for more than 800 years at the very center of Paris, literally and figuratively (the spot from which all official distances from the city are measured). So, although other French Gothic cathedrals may be architecturally purer (Chartres, for example), it is Notre Dame that everyone knows and visits. Statistics show that it is the most visited tourist site in Paris.

FIGURE 1. The burning spire of Notre Dame Cathedral, April 15, 2019. Photo: Thierry Malet, AP.

So, it is no surprise that when tragedy struck on the evening of April 15, 2019, and flames shot high in the air, soon toppling the cathedral's wooden spire – a 19th century addition by the architect Viollet le Duc – and destroying much of the roof beneath it **(FIG. 1** and **COVER),** the world was mesmerized. French President Emmanuel Macron vowed the next day to rebuild the cathedral quickly (too quickly, many say) and to start a fundraising campaign that would encourage contributions from average people, as well as the wealthy. Within days, approximately one billion dollars was raised, spurred not by ordinary citizens, however, but by an ongoing competition between France's wealthiest businessmen, the Pinaults (François and his son, François-Henri) and their rival, Bernard Arnaud, giants of the luxury industry, who between them promised 300 million Euros.

As *IFAR Journal* goes to press, much remains unanswered. It is still not clear what caused the fire, although arson and terrorism have apparently been ruled out. What is clear is that the building's construction – with its "forest" of 1,300 ancient dry oak beams in the attic – and the absence of sprinklers and firewalls/compartments in the area, facilitated the spread of flames. The lack of fire walls was intentional, an esthetic and art-historical decision that is now being second-guessed. Fire security procedures are also being reviewed – firefighters were not called when an initial alarm went off because, upon inspection, no fire was visible. By the time a second alarm sounded twenty-three minutes later, the fire had a disastrous head start.

IT COULD HAVE BEEN WORSE

Early fears that the entire cathedral would crumble were unfounded, due in part to the heroic efforts of hundreds of firefighters, including several who risked their lives to go directly into the attic area to fight the flames. The main cathedral structure and its Medieval stained-glass windows "appear to be" intact. Precious objects – such as the crown of thorns and relics of what is said to be the True Cross – were saved; some were carried out during the fire, while others – statues – had been removed even before the fire, as a precautionary measure while the cathedral was undergoing renovation, ironically intended to shore up the spire and

attic beams. And, mercifully, no lives were lost.

Among the many remaining questions and issues are:

- Whether there is structural damage to the stone façade and mortar due to exposure to the intense heat and later, water. Only careful inspection will tell.
- Whether the famed stained-glass windows and their lead framing – also susceptible to intense heat – are truly sound. Apparently, small cracks have been spotted.
- What are the restoration plans (in light of the tension between architectural purity, modern technology, and conservation ethics). Should the oak "forest," for example, dating to the 12th/13th century, be replicated?
- The precise cause of the fire (there are many theories).
- Future preventive measures.

Meanwhile, an open letter signed by more than 1,000 conservators, academics, engineers, and museum and other art specialists – including former Met Museum director Philippe de Montebello – was published in *Le Figaro* on April 28 asking President Macron to proceed cautiously with the renovations, rather than rush to rebuild in time for the 2024 Paris Olympics.

"The restoration process will be aided by the existence of digital/laser scans of Notre Dame and also spherical panoramas of the cathedral. … The scans and panoramas will be made available to IFAR for an *IFAR Evening*."

3D SCANS AND AN *IFAR EVENING*

The restoration process will be aided by the existence of digital/laser scans of Notre Dame and also spherical panoramas of the cathedral which, IFAR has been told by Dr. Lindsay Cook, Adjunct Assistant Professor at Vassar College, are being made available to the French authorities. The digital scans were created in 2015 by the late Professor Andrew Tallon of Vassar, who died in November 2018. His colleague, Lindsay Cook, created the spherical panoramas, which recreate the experience of walking through the vast cathedral interior. The scans and panoramas will also be made available to IFAR for an *IFAR Evening*, at which Professor Cook, one of several planned speakers, will serve as our guide.

—SHARON FLESCHER
Executive Director, IFAR

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LETTERS TO THE EDITOR

REMINDER

"Letters to the Editor" are welcome in *IFAR Journal*. Please keep letters brief. We reserve the right to edit for length. All letters must be signed. Please fax or mail letters to:

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AFTER FRANCE PASSES, CONTROVERSIAL CARAVAGGIO *JUDITH* HEADS TO AUCTION: WILL BUYERS RISK *THEIR* NECKS?

In a decisive move on December 24, the French government allowed the export ban on the recently discovered *Judith Beheading Holofernes* to expire **(FIG. 1),** clearing the way for it to be auctioned in France in June 2019 as a lost Caravaggio. The painting carries a very high pre-sale estimate of $115-170 million, and is being offered with no reserve or guarantee. It is a gamble; after five years of intensive research and technical scrutiny, scholarly opinion concerning the attribution remains mixed.

FIGURE 1. Newly found painting, *Judith Beheading Holofernes,* 144 x 173.5 cm, oil on canvas (Private Collection, Toulouse), said by some to be a Caravaggio.

As IFAR has previously reported,[1] the *Judith Beheading Holofernes* was discovered in the attic of a Toulouse farmhouse when the owners went to investigate the source of a leak in 2014. Local auctioneer Marc Labarbe sent a photo of the work to Eric Turquin, a Paris-based appraiser and Old Master specialist, who identified it as Caravaggio's lost second version of *Judith Beheading Holofernes.* Turquin then spent the next 18 months having the painting restored and showing it to Caravaggio scholars in an attempt to have it authenticated.

These efforts attracted the attention of the French Ministry of Culture, which in March 2016 issued a 30-month export ban to prevent the painting from being sold or exhibited outside of the country while experts at the Center for Research and Restoration of the Museums of France, based at the Louvre, investigated its attribution. The ban also gave the French government time to raise the funds to purchase the painting if experts determined it to be a national treasure. And indeed, if authentic, the newly found *Judith* would be a momentous discovery – a rare mature work by the notoriously tempestuous and short-lived Caravaggio, whose total output currently consists of only 78 paintings.[2]

The grisly scene derives from the Old Testament Book of Judith, showing the Jewish heroine calmly decapitating the Assyrian general Holofernes in his tent in order to save her besieged city. Caravaggio painted two versions of the subject. The first version, painted in Rome around 1599, and now housed in the Palazzo Barberini, shows a young Judith aggressively beheading the writhing Holofernes with his own sword. Caravaggio painted the second version around 1607 after fleeing Rome for Naples to avoid arrest for murder. It has disappeared – or had until now, if the discovery is indeed the real thing.

The lost painting's composition is known from a copy attributed to the Flemish painter Louis Finson in the collection of Banca Intesa di San Paolo, Naples. Although of clearly inferior artistic quality, the

1 Lisa Duffy-Zeballos and Sharon Flescher, "A Long-Lost Caravaggio? Not So Fast Doubters Say, But France Embargoes Export Just in Case," *IFAR Journal,* Vol. 17, no. 1, 2016, pp. 2-5.

2 See Fabio Scaletti, *Caravaggio: catalogo ragionato delle opere autografe, attribuite e controverse: con un regesto completo delle repliche e delle copie* (Naples: Artstudiopaparo, 2017). Scaletti does not include the Toulouse *Judith Beheading Holofernes* as an authentic work.

Neapolitan copy shows that the original painting bore the hallmarks of Caravaggio's dark, more restrained late style. Judith, wearing a black dress and veil as a reference to her widowhood, lightly grips the top of Holofernes' head as she slices it off.

Caravaggio's lost *Judith* can be traced with certainty up to 1617 in Amsterdam where it is mentioned in Finson's will. It may also be the painting that was cited in the collection of François Quesnel in Paris in 1697, after which its whereabouts are unknown. So, could the newly discovered painting be Caravaggio's lost original, or, as some scholars have suggested, is it another copy by Finson or an artist in his circle?

In November 2016, the painting was featured in a controversial exhibition "A Question of Attribution" held at the Pinacoteca di Brera in Milan **(FIG. 2)**.[3] The exhibition allowed the public to compare the Toulouse *Judith Beheading Holofernes* with Finson's copy in Naples, as well as with the Pinacoteca's *Supper at Emmaus* by Caravaggio. In an effort to reach scholarly consensus, the museum also hosted a closed study day for Caravaggio specialists and conservators to discuss the Toulouse painting's attribution.

The outcome of the study day was written up in a statement by Metropolitan Museum curator Keith Christiansen, and posted on the Brera Gallery's website.[4] The program included a discussion of the painting's material properties by Rosella Vodret, curator at the Palazzo Barberini, and Claudio Falcucci, a nuclear engineer and cultural heritage conservator, who found that except for the "concentric wrinkles in the old servant's face," the Toulouse painting's technique was "consistent with the work of Caravaggio."

Radiographs revealed that both the Toulouse and Naples paintings exhibited the same changes during the working process, suggesting that they were executed by two different artists working in the same studio. As Christiansen noted, the technical findings strongly suggest that Caravaggio set up a workshop soon after he arrived in Naples, thus challenging the romantic view of the artist as a volatile loner. Significantly, the presence of sketches, or *abbozzi,* and incisions in the Toulouse painting indicate that it is the "prime version" of the composition, which served as a model for the Neapolitan version.

Not everyone agrees with this assessment, however. In 2016

FIGURE 2. View of the 2016-2017 exhibition at the Pinacoteca di Brera, Milan. Left to right, starting from far left: *Supper at Emmaus* by Caravaggio; the Toulouse *Judith Beheading Holofernes*; Louis Finson, *Judith Beheading Holofernes.*

Richard Spear, a Caravaggio scholar, expressed reservations to IFAR about the painting's execution, noting that the highlights in the servant's face do not "follow any logic of anatomy or age."[5] Caravaggio specialists Giovanni Papi and Mina Gregori insist that the Toulouse *Judith Beheading Holofernes* was painted by Finson or a member of his circle. Even those who believe that the Toulouse painting is Caravaggio's original composition agree that various weak passages point to the involvement of another, inferior hand in its execution. The concentric wrinkles in the old servant's face, Holofernes' "brutal features," and the artist's use of a pale instead of a brown ground underneath the servant's head all suggest "the intervention of a second hand."[6] And it seems that French authorities, by their

[3] "A Question of Attribution," Pinacoteca de Brera, Milan (Nov. 10, 2016 - Feb. 5, 2017).

[4] Keith Christiansen, "The Study Day at Brera," Pinacoteca di Brera, 2016, pp. 1-4 www.pinacotecabrera.org

[5] Duffy-Zeballos and Flescher, op cit. p. 4.

[6] Christiansen, op cit., p. 3.

December ruling, also believe that the painting is not sufficiently by Caravaggio, if at all, to claim it as a national treasure.

For his part, Turquin insists that it is unrealistic to expect universal consensus on questions of attribution, pointing out that Leonardo experts remain divided on the *Salvator Mundi,* which nevertheless sold at Christie's for $450 million. Turquin will let the public decide for itself: the painting was recently exhibited at the Colnaghi Gallery in London and at Adam Williams Fine Art in New York, and is scheduled to go to the Hôtel des Ventes Saint-Aubin in Paris. The auction will be held on June 27 at the Maison de Ventes Marc Labarbe in Toulouse.

—LISA DUFFY-ZEBALLOS
Art Research Director, IFAR

• • •

SOTHEBY'S AND BARNET FAMILY CONTINUE CHALLENGE

DID THE SENDING OF A LETTER JEOPARDIZE GREECE'S IMMUNITY FROM SUIT IN THE U.S.?

Much has happened since May 11, 2018, when Sotheby's New York pulled an ancient Greek figurine from sale on the eve of auction, after receiving an emailed letter from the Greek Ministry of Culture alleging that the work had been looted and threatening legal action unless it was returned. The object in question, an 8th century BC bronze figure of a horse valued at $150,000–$200,000 **(FIG. 1),** was the catalogue cover for the May 14 auction: "The Shape of Beauty: Sculpture from the Collection of Howard and Saretta Barnet."[1]

FIGURE 1. Lot No. 4: *Figure of a Horse.* Greek, Geometric Period, ca. 8th century BC. Bronze. 5 ½". Photo: Sotheby's.

When Greece failed to respond to a request for more information to support its allegation, the Barnets and Sotheby's filed a June 2018 joint lawsuit against Greece (specifically its Ministry of Culture and Sports) in federal court in New York seeking a declaratory judgment asserting that the Barnets were the lawful owners of the bronze horse.[2]

Among the issues raised in the filings have been whether Greece had sufficient evidence to support its initial claim; whether Greece is protected from suit in the U.S. by the Foreign Sovereign Immunities Act (FSIA) or subject to its "commercial activity" exception; and whether Greece's single email to Sotheby's was sufficient to trigger the exception.

Greece's claim that the bronze figurine had been looted, or illegally exported, appears to have been based entirely on the fact that the antiquities dealer who sold the work to the Barnets in 1973 was Robin Symes, who would be implicated, many years later, in the sale of looted antiquities. (The only other known provenance information about the figurine is that it had been sold by a Swiss auction house in 1967.) The Barnets and Sotheby's contend that this evidence is tenuous at best and does not come close to proving that the work was looted.

In their June 2018 filing, the Barnets and Sotheby's asserted that the FSIA did not protect Greece from suit in the U.S. because Greece's interference in the sale was an action that could be performed by a private person, rather than a sovereign nation. According to the Barnets and Sotheby's, such an activity fell within the

1 See Andrea Gumushian and Sharon Flescher, "Beware of Greeks Requesting Horses," *IFAR Journal,* Vol. 19, Nos. 1 & 2 (2018).

2 *Barnet et al v. Ministry of Culture and Sports of the Hellenic Republic,* No. 18-cv-4963 (S.D.N.Y. *filed* June 5, 2018).

"commercial activity" exception to the FSIA. In a November 2018 motion to dismiss, Greece countered by stating that its effort to recover the bronze horse *was* a sovereign action because Greek law required the government to protect its cultural heritage. The Barnets and Sotheby's asserted, in their December 2018 response, that according to U.S. case law, when deciding whether the commercial activity exception applied, U.S. courts were to focus on the "nature" of the particular action, not its broader "purpose," meaning that Greece's specific action (interfering in an auction), which could be performed by an individual, was more significant than its reason for taking the action (protecting the nation's cultural heritage), which could be seen as a sovereign obligation.

Greece also argued that there was an insufficient "nexus" of commercial activity with the U.S. for the commercial activity exception to apply. Greece had simply sent a letter to an auction house in order "to raise concerns about the sale of an object" originating in Greece, which should be viewed as a mere "isolated act." The Barnets and Sotheby's challenged this claim by noting that previous courts had held that even "a single act" was sufficient to subject a claim to the commercial activity exception.

In addition to the issue of foreign sovereign immunity, Greece's November 2018 motion also sought to have Sotheby's dismissed as a co-plaintiff, asserting that it had no standing to sue because it had not been harmed by Greece's actions, as Sotheby's was not the owner of the bronze and merely withdrew it from sale. Moreover, it had not lost a commission, as there was no guarantee that the work would have sold. The Barnets and Sotheby's rejected this reasoning, stating that Sotheby's did indeed suffer harm because Greece's allegation alone rendered the work effectively unsalable, thus preventing Sotheby's from *ever* obtaining a commission.

Greece concluded its motion by warning the District Court that if it ruled that the mere sending of a letter constituted a commercial activity, Greece, as well as other countries, would no longer "pursu[e] stolen or plundered cultural artifacts" in the U.S. "out of fear that [doing so] would subject them to jurisdiction in [U.S.] courts." Such an outcome would have a "chilling effect on the ability of foreign sovereigns to protect their cultural heritage."

By pro-actively challenging Greece's claim in court, Sotheby's has essentially drawn a line in the sand, asserting that it will no longer simply accept a claim that an object was looted, without evidence. While this may not lead to the "chilling effect" Greece predicts, is it unreasonable to ask what steps, if any, a foreign country *could* take to raise concerns about an object's provenance without risk of being hauled into an American court?

—NICHOLAS DIETZ
Legal Research Associate
and **S.F.**

• • •

BOTH SIDES SUBMIT SUMMARY JUDGMENT MOTIONS IN BATTLE OVER "GUENNOL STARGAZER"

1906 OTTOMAN DECREE CITED BY BOTH TURKEY AND CHRISTIE'S

When IFAR last discussed[1] the lawsuit between Turkey and Christie's over an allegedly looted Turkish statuette sold at auction,[2] we focused in large part on the importance of the wording of a 1906 Ottoman era Decree that Turkey was relying on in its ownership claim.[3] More than a year – and dozens of filings – later, this Decree remains an issue in the case.

As a bit of a refresher, the dispute began in April 2017, when Turkey contacted Christie's alleging that a rare 5,000 year old figure, known as the "Guennol Stargazer," **(FIG. 1)** had been looted from Turkey, and demanded its return.

Christie's refused.

FIGURE 1. The "Guennol Stargazer" (marble, ca. 3000-2200 BC); allegedly looted from Turkey in the early 1960s; sold at an April 2017 Christie's auction to an anonymous bidder, who later withdrew.

On April 27, 2017, the day before the scheduled auction, Turkey filed for a temporary restraining order to block the sale. The U.S. District Court for the Southern District of New York denied the order on the condition that Christie's announce at the auction that the item was "subject to a claim" by Turkey.

The figure, consigned by collector Michael Steinhardt, who had purchased it in 1993, sold for $12.7 million ($14,471,500 million with the buyer's premium). Turkey then sought the identity of the winning bidder, who proceeded to withdraw from the sale on June 20, 2017. (Despite the withdrawal, Christie's was later ordered to reveal the bidder's identity.)

A year later, on June 26, 2018, Christie's and Steinhardt filed a joint response to Turkey's claim for the *Stargazer* (also referred to as the "Idol"); it consisted of three counterclaims – one by Steinhardt and two by Christie's. Steinhardt sought a declaratory judgment stating that he was the legal owner of the Idol. Christie's, meanwhile, alleged that Turkey's actions had caused the winning bidder to back out of the sale, thus making it liable for tortious interference with contract or, alternatively, tortious interference "with prospective economic advantage." Christie's sought to recover the $14,471,500 price realized at the auction, as well as $15 million dollars in punitive damages.

DUELING SUMMARY JUDGMENT MOTIONS

After further filings by both sides, on December 7, 2018, Christie's and Steinhardt filed a motion for summary judgment against Turkey's ownership claim. On the same date, Turkey moved for summary judgment against Christie's' two tortious interference counterclaims and also filed a separate motion – to exclude the testimony of two of Christie's and Steinhardt's expert witnesses.

The arguments Turkey presented in its summary judgment motion against Christie's' counterclaims are unknown, as the "Memorandum of Law," which contains these arguments, has been sealed. As for the motion to exclude expert witnesses, Turkey argued that the defense's legal expert, a Turkish attorney, was "not an expert in Turkey's cultural patrimony laws" and, moreover, held "extreme and emotional bias against [Turkey];" but the section

1 *IFAR Journal*, Vol. 18, nos. 2&3 (2017).

2 *Turkey v. Christie's*, No. 17-cv-03086 (S.D.N.Y. *filed* April 27, 2017).

3 Decree on Antiquities (10 April 1906).

discussing his supposed bias is almost entirely redacted. Turkey also sought to disqualify Christie's and Steinhardt's antiquities expert, contending that he was trained in art history, not archaeology, and was therefore not qualified to "opine on archaeological matters pertaining to the Idol."

For their part, Christie's and Steinhardt's summary judgment motion presented two major arguments: first that Turkey's ownership claim was time-barred, as it had been filed after the statute of limitations had expired, and, secondly, that the 1906 Ottoman Decree that Turkey relied upon did not grant Turkey ownership of the Idol.

With regard to the first argument, Christie's and Steinhardt noted that Turkey's claim for the Idol was covered by New York's 3-year statute of limitations for replevin and conversion claims. Normally the limitations period begins to run at the time of the alleged crime; however, if the claimant is unaware that he/she has a claim or does not know the location of the item, New York's "demand and refusal" rule applies and the limitations period does not begin to run until the claimant has requested the item's return and been rejected. Turkey asserted that it had not known the Idol's whereabouts until learning of the Christie's auction in 2017 and, therefore, the 3-year limitations period should begin from the time Christie's refused to return it in April of that year.

Not so, Christie's and Steinhardt argued; Turkey had known the whereabouts of the Idol for decades, as its prior owner had put the work on public display at the Metropolitan Museum of Art from 1968 to 1993, and the demand and refusal rule does not apply in "a conversion claim against a possessor who openly deals with the property as its own." Therefore, they say, the statute of limitations on Turkey's claim would have expired in 1968, three years after it was first displayed. Moreover, even if one ignored the prior owner's public display of the work, it was also openly displayed by Steinhardt himself, beginning with a loan to the Met in 1999, meaning the limitations period would have ended – at the very latest – in 2002.

They also argued that demand and refusal did not apply because Turkey had "unreasonably delayed" filing a "known claim," to which Turkey countered that this was a laches argument, which can only be raised as an affirmative defense and not, as here, in a summary judgment motion.

THE OTTOMAN DECREE

Christie's and Steinhardt's second major argument involves the 1906 Ottoman Decree. As IFAR has done extensive research on this document, let us delve more deeply into this argument.

"Turkey also sought to disqualify Christie's and Steinhardt's antiquities expert, contending that he was trained in art history, not archaeology ..."

Citing the precedential 1979 case of *U.S. v. McClain,* Christie's noted that a U.S. court will only apply foreign cultural patrimony laws if they are expressed "with sufficient clarity to survive translation into terms understandable by and binding upon American citizens."[4] Turkey has never produced an official English translation of the 1906 law and allegedly ignored requests from UNESCO to do so, only submitting a 1983 law to be posted on UNESCO's website. Christie's alleged that such actions indicate that "Turkey believes it can enforce the 1906 Decree without informing the U.S. public what that law is or what it says."

What is more, Christie's noted, "[u]ntil the 1960s, the Decree was available only in ancient Turkish – a language understood by very few at the time and even

4 *United States v. McClain,* 593 F.2d 658, 670 (5th Cir. 1979).

fewer today."[5] IFAR noted this same fact in our 2017 article, but we were able to locate one of the "very few" people. As a result, the IFAR website (www.ifar.org)[6] now boasts an unofficial English translation of the 1906 Decree from the "ancient Turkish," as well as the original "ancient Turkish" version.

"The IFAR website (www.ifar.org) now boasts an unofficial English translation of the 1906 Decree from the 'ancient Turkish,' as well as the original 'ancient Turkish' version."

In Turkey's January 2019 response to Christie's and Steinhardt's motion for summary judgment, Turkey denies that the 1906 Decree is unclear, stating that the "plain language of the Decree … provides for automatic ownership in the State of all antiquities found in Turkey."[7] This is followed by a completely redacted statement by one of Turkey's expert witnesses; however, the document contains an exhibit notation and the contents of this exhibit – perhaps due to an oversight – are un-redacted.

The un-redacted exhibit, a report prepared by one of Turkey's expert witnesses, states that "the Decree enacted in 1906 provided for State Ownership of all newly-found antiquities without any exception," and adds that "the relevant sections of the 1906 Decree" along with "an English translation" are attached.[8] The attached document, however, is *not* the original 1906 Decree, which was written in "Ottoman Arabic" script; it is actually a copy of the Decree published in 1966 in the Latin script of "modern" Turkish. This 1966 document, as discussed in the 2017 *IFAR Journal,* also includes an "updated" version of the 1906 Decree that contains many differences from the original. More significantly, the English translation provided by Turkey, although "new," in that it was produced in late 2017 *after* IFAR's arcticle was published, contains the same crucial differences that IFAR previously identified.

As in its prior English translation, the first line of Article 4 in Turkey's 2017 translation refers to the Ottoman Empire's ownership of all "immovable and movable" antiquities in its territory. However, as we noted in the 2017 *IFAR Journal,* this phrase does *not* appear in the first line of Article 4 in the original 1906 Law; it appears *only* in the modified 1966 version of the law. Moreover, according to IFAR's translation, the last line of Article 4 states that, in addition to antiquities (or "historical artifacts"), the Article also applies to "moveable and immovable *fine arts.*" Turkey's translation, in contrast, states that the article also applies to "movable and immovable *antiquities related to Islamic crafts and* fine arts." Once again, the translation provided by Turkey does not correspond to the original 1906 Ottoman text, but to the modified 1966 version.

The presence or absence of a readily available English translation of the 1906 Decree is a major issue in this case, Christie's and Steinhardt argue, because a prerequisite to U.S. enforcement of a foreign cultural patrimony law is that it is accessible to the American public. In a January 2019 filing, Turkey countered that requiring a foreign nation to publish its laws in English in order for them to be enforced in the U.S. was a "remarkable example of chauvinism" and contended that the existence of a 1907 French translation of the Decree was sufficient, as French was the "international language of diplomacy" at the time. Perhaps so, but the fact that Turkey has *still* not produced an accurate English translation of its 1906

[5] Defs.' Mot. for Summ. Judgment, Doc. 191, p. 23 (Dec. 7, 2018).

[6] See IFAR's Art Law & Cultural Property Law Database (http://ifar.org/art_law.php), specifically the Country Summary for Turkey

[7] Pl.'s Opp. to Defs.' Mot. for Summ. Judgment, Doc. 230, p. 13 (Jan. 12, 2019).

[8] Pl.'s Declar., Doc. 202-7, Exhibit G, p. 5 (Dec. 8, 2018).

Decree, even as it increases its efforts to recover antiquities based on this very Decree, is worthy of note.

A court ruling that helps determine what type of foreign cultural property law is deemed "accessible to the American public" would likely have significant ramifications in future cultural property cases and may even affect the way foreign countries write their laws in the future. Such a ruling in this case, however, should not be expected soon. As *IFAR Journal* goes to press, Oral Arguments have not been scheduled.

— **N.D.** and **S.F.**

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In Brief—

A Busy Period for CPAC

Since we last wrote about this in *IFAR Journal* (Vol.19, nos. 1, 2 & 3), the State Department's Cultural Property Advisory Committee (CPAC) has been very busy—approving 5-year extensions of several existing bilateral agreements (Memoranda of Understanding, or MOUs) that restrict the importation into the U.S. of cultural objects considered at risk of pillage. These agreements are pursuant to the 1983 U.S. Convention on Cultural Property Implementation Act (CPIA), the implementing legislation for the 1970 UNESCO Convention on Cultural Property.

The renewals—each for 5 years—are with the following countries:

- Bulgaria—Renewal entered into force January 14, 2019. The initial agreement was in 2014.
- Honduras—Renewal entered into force on March 12, 2019. This follows several other 5-year renewals, after an initial agreement in 2004.
- China—Renewal entered into force on January 14, 2019, with previous agreements in 2014 and 2009.

Significantly, there are two entirely new requests under consideration, from:

- Jordan—regarding archaeological material from the Paleolithic era (roughly 1,500,000 BC) through the Ottoman era, 1750.
- Chile—regarding a broad range of archaeological objects, mainly from the North and Central regions of the country, including ceramic vessels and stone, textile and metal artifacts. Paleontological material is included as a subset of archaeological material under Chilean law and is mentioned in the request to the U.S.

Jordan's request was sent in January and Chile's in February. Both were considered at CPAC's recent meeting in early April 2019, to which comments by the public and art professionals, pro and con, could be submitted.

Meanwhile, a controversial request from Algeria, submitted to the U.S. in 2018 and considered at CPAC's meeting on July 31, 2018, is still under consideration (see *IFAR Journal,* Vol. 19, nos. 2&3, 4).

For more information about all of these requests, visit the website of the U.S. State Department's Bureau of Educational and Cultural Affairs (eca.state.gov/cultural-heritage-center), or IFAR's Art Law & Cultural Property Database (www.ifar.org).

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Van Gogh *Poppies* Grow in Wadsworth Atheneum

Long-Questioned Painting Declared Authentic

It is not often that a Van Gogh work is added to the canon, but *that* good news was conveyed to the Wadsworth Atheneum, in Hartford, Connecticut in March, when specialists at the Van Gogh Museum in Amsterdam determined that a flower painting in the Atheneum's collection for more than 50 years is the real thing – both stylistically and materially.

FIGURE 1. Vincent Van Gogh, *Vase with Poppies,* c. 1886. Oil on canvas. 21½ x 17¾ in. Bequest of Anne Parrish Titzell. 1957.617. Wadsworth Atheneum Museum of Art,

The painting, *Vase with Poppies* **(FIG. 1),** an oil on canvas bequeathed to the museum in 1957 by a collector who also donated works by Monet, Renoir and Degas, hung in the museum as a Van Gogh until 1990, when its attribution was questioned by a Van Gogh specialist, who also raised

FIGURE 2. X-ray image of the painting underneath *Vase with Poppies,* turned upside down, with ear and nose indicated in red. Photo: Wadsworth Atheneum.

questions about a *Self Portrait* in the museum. Tests soon revealed that the *Self Portrait* had another painting underneath, which assuaged concerns. But *Poppies* was removed from view – permanently, until now. At one point, it even hung on a wall in the museum's accounting office, said the museum's director, Tom Loughman, at a Van Gogh program at TEFAF in New York in May.

More recently, the museum decided to revisit the attribution question. After doing some of its own research, when X-rays found an under painting (a human bust) beneath this work too **(FIG. 2),** it gave them hope. They sent the work to the Van Gogh Museum in Amsterdam, which has amassed an extraordinary body of knowledge about the artist's materials and working methods and has access to some of the more sophisticated technology that has become available in recent years. The canvas of the painting was "mapped," as part of an extensive Thread Count Automation Project, and found to be consistent with Van Gogh's other works of this period. Documentary evidence – e.g., an 1886 letter; exhibition history (the work, it turns out, was exhibited at the famous 1913 Armory Show in New York) – also supported the Van Gogh attribution, as did stylistic comparison with other works. *Poppies* is now dated to 1886-87, a transitional period when Van Gogh first came to Paris from Holland and before he went to Arles in the South of France.

It is back on view at the Atheneum, along with the *Self Portrait,* but only for a few months, when it will be lent to an exhibition in Europe on Van Gogh's Still Lifes.

• • •

End of the Road for Claim for Cranach's *Adam* and *Eve*

After years of litigation, and numerous yo-yo-like legal decisions and reversals, the ownership claim by Marei von Saher for two 16th century panel paintings of *Adam* and *Eve* **(FIG. 1)** by Lucas Cranach the Elder in the Norton Simon Museum in Pasadena is over. On, May 20, as IFAR was going to press, the Supreme Court announced its decision not to review the Ninth Circuit's July 2018 ruling that the paintings can stay in the Norton Simon, which has had them since 1971. Von Saher, heir to Dutch Jewish art dealer and collector, Jacques Goudstikker, the pre-WWII owner of the diptych, has tried to claim the paintings from the museum since 2007. The Supreme Court's decision is perhaps not surprising. This is the third time it has denied *certiorari* in this case.

FIGURE 1. Lucas Cranach the Elder, *Adam* and *Eve,* c. 1530. Both, oil on panel, 75 x 27 ½ in. Norton Simon Museum, Pasadena.

IFAR has been writing about this very complicated legal case since 2008, when the beautiful panels graced the cover of the *IFAR Journal.* Our last issue, Vol. 19, no. 3, had a detailed discussion of the 2018 legal decision, which ruled that the paintings could remain in the museum based on the Act of State Doctrine. (See, among many other articles, *IFAR Journal*, Vols. 10, no. 2; 15, no. 2; 17, no. 2.)

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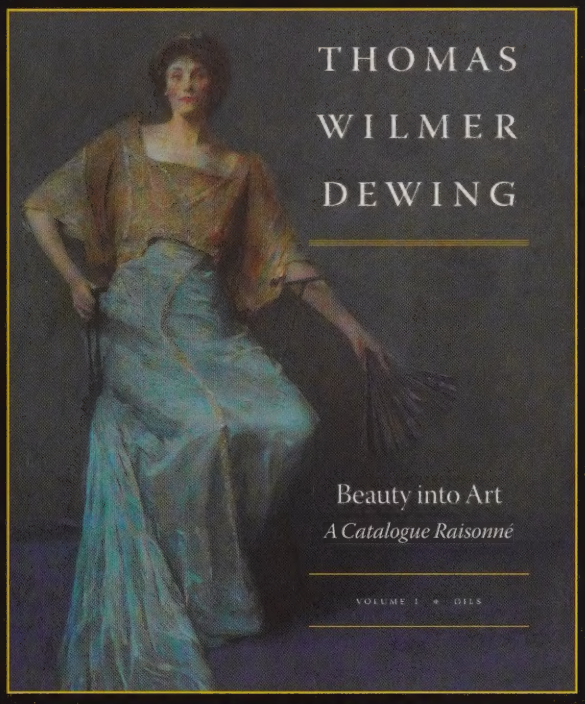

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JUDGE RULES MADRID MUSEUM CAN KEEP DISPUTED PISSARRO PAINTING

CLAIMANTS WILL APPEAL—AGAIN

After more than a decade of litigation,[1] the ownership battle over a Pissarro painting **(FIG. 1)** taken by the Nazis from a German-Jewish woman, Lilly Cassirer Neubauer, in a 1939 forced sale, recently turned, in part, on a single Spanish word—*encubridor.* And although the word – generally understood as meaning "accessory after the fact," was interpreted by the court to mean "one who knowingly receives and benefits from stolen property," as the claimants essentially wanted, the California District Court ruling that just came down on April 30 was a victory for the Spanish museum that has held the work since 1993.

In 2017, the Ninth Circuit court of appeals in California ruled that the long-running claim for the painting, currently in the Thyssen-Bornemisza Collection in Madrid, could go forward after many ups and downs, and remanded the case to the District Court in Los Angeles for trial.[2] Spanish law, not U.S. law, the court said, would govern. At issue: whether under Spanish law, the Madrid museum knew the painting was "stolen property" when it acquired it from Baron Thyssen-Bornemisza in 1993, in which case, it would be an accessory to the crime – an *encubridor* – and unable to keep the painting;[3] and whether the Baron who had purchased the painting in 1976 and held it in Switzerland until it entered the eponymous museum's collection, had acquired title to it under Swiss law as a good faith purchaser, in which case legal title would have passed to the museum in 1993.

> "'After considering all the evidence', he wrote, the museum 'is the lawful owner.' Nonetheless, he admonished the museum for not meeting its moral commitments under the Washington Principles, to which Spain in a signatory. … The Court … cannot force the Kingdom of Spain or [the Thyssen-Bornemisza Collection] to comply with its moral commitments."

On April 30, 2019 in a detailed 34-page Memorandum, District Court Judge John W. Walter (the same judge who presided in the *Von Saher v. Norton Simon Museum* case that IFAR has followed so closely) ruled that the Baron had not acquired title under Swiss law, and that the museum was not an "accessory" or *encubridor.* The museum, he said, did not have actual knowledge (nor did the Baron) that the painting was the product of theft, despite the existence of several possible red flags; and, in fact, even had the museum (or the Baron) undertaken more provenance research at the time, it was unlikely they would have uncovered the fact that "Lilly" had owned the painting or that it had been taken forcibly from her. Therefore, "after considering all the evidence,"

FIGURE 1. Camille Pissarro, ***Rue Saint-Honoré, après-midi, effet de pluie,*** 1897. Oil on canvas. 32" x 25 ½". Claimed from the Thyssen-Bornemisza Collection, Madrid.

[1] IFAR has been writing about this case for years, see e.g., *IFAR Journal,* Vol. 16, no. 3 (2015) and Vol. 13, no. 3 (2012).

[2] *Cassirer v. Thyssen-Bornemisza Collection Found.,* 862 F.3d 951 (9th Cir 2017).

[3] Articles 1955 and 1956 under Spain's Civil Code spell out the terms under which a person can obtain legal title under acquisitive prescription, and if the museum were determined to be an encubridor under Article 1956, the ownership of the painting would go to the claimant Cassirer heirs.

he wrote, the museum "is the lawful owner."[4] Nonetheless, he admonished the museum for not meeting its moral commitments under the Washington Principles, to which Spain is a signatory. "The Court has no alternative," he wrote, "but to apply Spanish law and cannot force the Kingdom of Spain or [the Thyssen-Bornemisza Collection] to comply with its moral commitments."

"Judge Walter's own written decision ma[d]e clear that he assume[d] the parties would 'pursue additional appellate review'."

As IFAR was at press, we learned that the claimants – the Cassirer family heirs – will appeal once again to the Ninth Circuit, which has overturned other lower court rulings against them. One of their attorneys, Stephen Zack from the firm of Boies Schiller Flexner, had previously told several newspapers that, "We respectfully disagree that the court cannot force the Kingdom of Spain to comply with its moral commitments." Judge Walter's own written decision made clear that he assumed the parties would "pursue additional appellate review."

4 *Cassirer v. Thyssen-Bornemisza* No.05-03459 JFW-E, Document 621 (C.D. of Cal., Apr. 30, 2019).

HOW DID WE GET TO THIS POINT?

The story begins in 1939 when Lilly Cassirer Neubauer, a German-Jewish art collector, was forced to sell Camille Pissarro's *Rue Saint-Honoré, après-midi, effet de pluie,* an 1897 oil painting, to a Nazi official in order to obtain an exit visa out of Germany. The sum she received, the equivalent of $360 at the time, was deposited in a bank account that she was prohibited from accessing.

After the war, Lilly sought compensation from Germany for the painting, which both sides believed was lost. She filed her claim in 1957 and, the following year, reached a settlement with Germany, which also involved two other claimants. At the time, the painting had an agreed upon value of roughly $28,500. The agreement called for Lilly to receive $25,000 of this figure, with the remainder going to one of the other claimants.

Unbeknownst to Lilly, the Pissarro had survived the war and made its way to the U.S, where it would change hands several times before being purchased from a New York dealer in 1976 for $300,000 (including commission) by Swiss art collector Baron Hans-Heinrich Thyssen-Bornemisza.

In 1993, Thyssen-Bornemisza sold his entire art collection, including the Pissarro, to the Spanish government for over $300 million. The Collection became the state-run "Thyssen-Bornemisza Collection Foundation" and was exhibited at the new "Thyssen-Bornemisza Museum" in Madrid.

Decades after Lilly's death, her grandson, California-resident Claude Cassirer (now deceased), learned in 2000 that the Pissarro had not been destroyed and was informed of its current location. He contacted Spain's Minister of Culture – who also happened to be the Chairman of the Thyssen-Bornemisza Collection Foundation – seeking the work's return. His request was denied.

Cassirer filed suit in 2005 against Spain and the Thyssen-Bornemisza Collection Foundation in the Federal District Court for the Central District of California. (At the U.S. State Department's urging, he dropped his claims against Spain itself in 2011, but pressed on with his suit against the Foundation.)

Spain and the Foundation (museum) moved for dismissal on foreign sovereign immunity grounds. The District Court denied the motion, holding that the suit was permissible under the "expropriation exception" to the Foreign Sovereign Immunities Act (FSIA), which permits foreign states to be

sued in the U.S. when they have taken property in violation of international law. The Ninth Circuit upheld the ruling in a 2010 appeal.

The Foundation next sought to have the suit dismissed under statute of limitations grounds, challenging a 2011 California law that had extended the time limit for Holocaust-Era art claims. In 2012, the court found the new law unconstitutional, but the ruling was reversed after another appeal to the Ninth Circuit.

The Foundation then argued that the case should be dismissed because Lilly had already been fully compensated for the loss of the painting in the 1958 Settlement Agreement with Germany. In March 2015, the District Court denied the motion, stating that "nothing in the express language of the Settlement Agreement suggests that [Lilly] relinquished her ownership rights to the Pissarro Painting, or that she waived any [future] right to recover the Pissarro Painting from a third party." The court also noted that at the time the agreement was made, the parties all assumed the painting had been lost.

Shortly thereafter, the Foundation moved for the court to apply Spanish law in the case, noting that the work was currently in Spain (and had been for decades) and many of the witnesses were Spanish, while California had little connection to the work. The District Court agreed and decided the case based on the Spanish law of "acquisitive prescription," which, unlike U.S. law, holds that a party gains legal title to property by possessing it openly and continuously for three years (if acting in good faith) or six years (if acting in bad faith). As both the Baron and the Foundation had possessed the work for well over six years, the District Court ruled in June 2015 that the Foundation was the rightful owner of the Pissarro.

Cassirer again appealed to the Ninth Circuit, arguing that the 6-year time period for bad faith acquisitive prescription did not apply to the Foundation because, under Article 1956 of the Spanish Civil Code, an *encubridor* cannot acquire title until six years *after* the statute of limitations of his/her underlying crime has expired. Cassirer argued that the Foundation had committed the crimes of possession of stolen property and being an accessory after the fact, which carries a 20-year statute of limitations, meaning that the Foundation could not gain title to the work through acquisitive prescription until it had held the work for 26 years after its purchase; thus, 2019. This 26-year period would only apply, however, if the Foundation was an *encubridor,* so the precise definition of that word was vital. The hitch was that multiple Spanish sources gave different definitions.

The Cassirers contended that the court should follow the definition used in the 1870 Spanish *Penal* Code, which was in force when Article 1956 of the *Civil* Code was enacted in 1889, as this would have been the *legal* definition of the term. The 1870 Penal Code defined an *encubridor* as "one who knowingly benefits himself from stolen property."

The Foundation, on the other hand, argued that the court should follow the definition found in lay dictionaries from the time that Article 1956 was adopted (i.e. the 1880s), as this would have been the common interpretation of the term. These dictionaries defined an *encubridor* as "one who covers something up."

In its July 2017 decision, which reversed and remanded the case for a *third* time, the Ninth Circuit spent a full 20 pages discussing the meaning of the word *encubridor.* The court examined both lay and academic dictionaries from the 1880s; an official translation of Article 1956 from Spain's Ministry of Justice; and the 1870 Spanish Penal Code. Every source provided a different definition of the term, some varying only slightly, others significantly.[5]

[5] Most Spanish dictionaries of today define the word as an "accessory after the fact."

The court decided that the most appropriate definition to apply was the legal definition found in the 1870 Penal Code, but tweaked it slightly to define an *encubridor* as one who "knowingly receives and benefits from stolen property."

Since the lower court had not ruled on whether the Foundation had known the Pissarro was stolen at the time it acquired the work, the case should not have been dismissed and was accordingly remanded to the District Court. The Foundation appealed the Ninth Circuit's decision all the way up to the U.S. Supreme Court, but the high court denied *certiorari* in May 2018.

On December 4, 2018, the non-jury trial was held in the Federal District Court for the Central District of California before Judge Walter, replete with the expert testimony of numerous art historians (including Lynn Nicholas, author of *The Rape of Europa,* on behalf of the museum) and Spanish legal scholars. At trial, the museum attempted to prove not only that it had lacked knowledge that the Pissarro was stolen, but raised a new argument, contending that it could not be an *encubridor* in the first place, because the term only applied to "natural persons," not organizations.

Cassirer objected, asserting that the museum could not raise the latter issue because the Ninth Circuit had already determined that it was indeed an *encubridor.* The District Court agreed with Cassirer in a post-trial order issued December 10, holding that the only question it was meant to decide was whether the museum/Foundation knew the painting had been stolen when it purchased it. If the Foundation sought to argue the issue of whether or not it was an *encubridor,* Judge Walter ruled that it would first have to file a new brief convincing him that the issue remained open.

The Foundation did just that; it filed the requested brief on January 11, 2019, focusing on the precise wording the Ninth Circuit had used in its 2017 decision. The Foundation argued that the Ninth Circuit's ruling had merely stated that an organization could be an *encubridor,* but it had never stated that the Foundation itself was an *encubridor.* Consequently, it argued, the question of whether or not it was in fact an *encubridor* had yet to be decided and the District Court would have to adjudicate that issue before it could assess the Foundation's knowledge of the Pissarro's provenance. Cassirer's reply brief restated that the *encubridor* issue had already been resolved by the Ninth Circuit and that the only question that lay before the District Court was: Did the Thyssen-Bornemisza Foundation know the Pissarro had been looted by the Nazis at the time it purchased the painting?

In his recent April 30 Memorandum, Judge Walter made clear that while only individuals, not legal entities could be held liable under Spanish criminal law, Article 1956 is part of the Spanish *Civil* Code and applies to "both natural persons and legal persons," so the museum could in theory be an *encubridor,* although, as we have seen, he ruled that it was not.

Subsequent to the April 30 ruling, the parties could not agree on a proposed judgment. On May 17, the judge, accepting the plaintiff's proposal, ordered that the "Plaintiffs take nothing" and "The action be dismissed on the merits."[6] As we have said, however, the decision is being appealed.

The legal details of this case are complex – explaining, perhaps, why it has gone on and on, back and forth from the lower to the upper courts. But the fact remains that both sides agree the work was forcibly taken from Lilly Cassirer Neubauer during the Nazi Era, and if ever a case demonstrates the tension between law and ethics, this is it. Stay tuned.

— **S.F.** and **N.D.**

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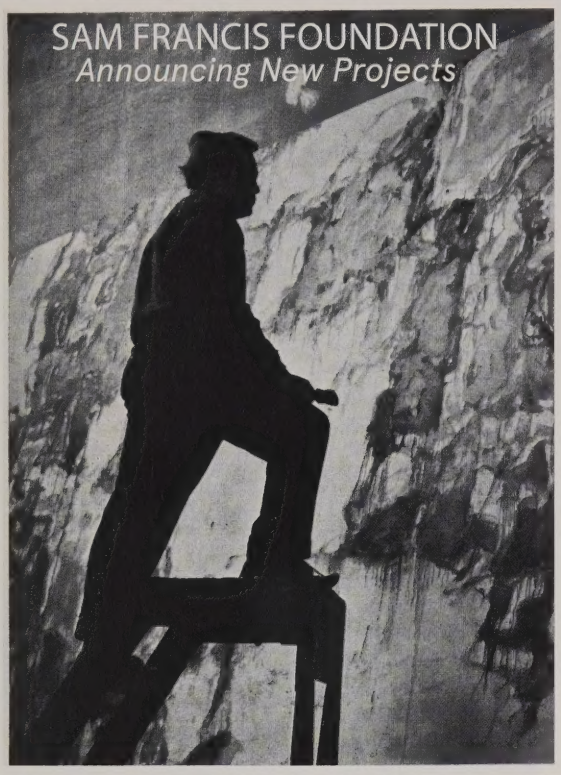
6 *Judgment, Cassirer v. Thyssen-Bornemisza Collection Found.*, No. CV 05-03459-JFW (C.D. of Cal., May 17, 2019).



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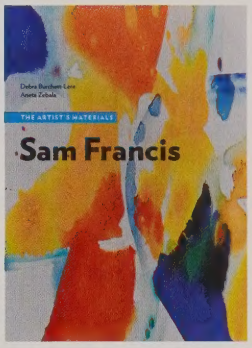

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A SYNCHROMIST WORK THAT'S OUT OF SYNC

LISA DUFFY-ZEBALLOS AND SHARON FLESCHER*

Not long ago, IFAR's Authentication Research Service received what seemed to be a promising inquiry regarding a small painting titled *Synchromy* **(FIG. 1),** said to be by the American artist Stanton Macdonald-Wright (1890-1973), co-founder of Synchromism. It came with an impressive provenance; labels on the verso indicated that it had passed through several well-known New York art galleries, and had once belonged to the actor Steve Martin **(FIG. 2).**[1] The Allan Stone Gallery included it in a 2002 exhibition as a work from Macdonald-Wright's classic Synchromist period from 1916-1917.[2]

Indeed, the painting's multi-hued spherical forms seemed, at least on first glance, to bear the hallmarks of Macdonald-Wright's early works. Upon closer examination, however, and with the help of two prominent scholars who helped us understand the color theory underlying Synchromism, IFAR was able to decode the painting and uncover a fake.

FIGURE 1. IFAR 16.01, ***Synchromy,*** submitted to IFAR with an attribution to Stanton Macdonald-Wright. Oil on canvas, 10½ x 8½ in.

SYNCHROMISM

Like its European counterpart Orphism (think Delaunay), Synchromism developed around 1913 as an outgrowth of Analytic Cubism, but instead of Cubism's fractured geometric shapes and earth tones, in Synchromism form and pictorial space are conceived in terms of color. Founded by Macdonald-Wright together with his friend Morgan Russell, Synchromism is often hailed as the first American avant-garde art movement.

Underlying Synchromism are the complex color theories of Ernest Percyval Tudor-Hart, Russell and Macdonald-Wright's teacher in France, who believed that the color spectrum is scientifically linked to musical scales, and that artworks constructed with the logic of chromatic scales would bring the kind of visual harmonies to the eye that musical arrange-

* Lisa Duffy-Zeballos, Ph.D. is the Art Research Director of IFAR. Sharon Flescher, Ph.D. is the Executive Director of IFAR.

1 A Zabriskie Gallery label bore the gallery's address from 1983 to 1996. The Zabriskie Gallery Papers at the Archives of American Art contained no additional information on the painting, but there were two slides of the IFAR painting among the Papers, confirming that it had been in the gallery. Gallery staff, including the late Virginia Zabriskie herself, recognized the painting, but did not know how the gallery acquired it. Nor could anyone recall selling it to Steve Martin (who did not respond to our inquiry). The address on the second label showed that it was in the Allan Stone Gallery before 1994. Staff at the Allan Stone gallery did not know how Stone had acquired the painting, however, and they have no records relating to it.

2 *Abstraction,* Allan Stone Gallery, New York (March 14- April 25, 2002).

FIGURE 2. Verso of 16.01 showing collection labels and stamps.

ments produce in the ear.[3] Central to this theory is the correlation of the 12-part color wheel with a 12-tone musical scale, the former comprising the three primary colors (red, blue and yellow), the three secondary colors (orange, green and violet), and the six tertiaries (the colors in between), and the latter comprising seven tones and five sharps and flats.[4]

Macdonald-Wright's 1924 manuscript *A Treatise on Color* provides a key to understanding how he and Russell constructed their Synchromies. Along with his *Treatise,* Macdonald-Wright included templates based on the color wheel **(FIG. 3).** Functioning much like musical key signatures, the color charts could be used by artists to compose chromatically accurate Synchromist paintings in specific color "keys."

The artist began by choosing a "tonic color" as the starting point of a color sequence, or "scale," and determined the other colors by following specific intervals on the color wheel, corresponding to whole and half steps on the musical scale.[5] For example, a yellow tonic color would dictate a palette of yellow, green, blue, blue-violet, red-violet, red-orange, and yellow-orange, of which the triad of yellow, blue-violet and orange form a major chord.

Russell and Macdonald-Wright used only spectral colors, which they believed produced the purest aesthetic response, and, significantly, they did *not* blend colors, which would cause each color to lose its original "tone."

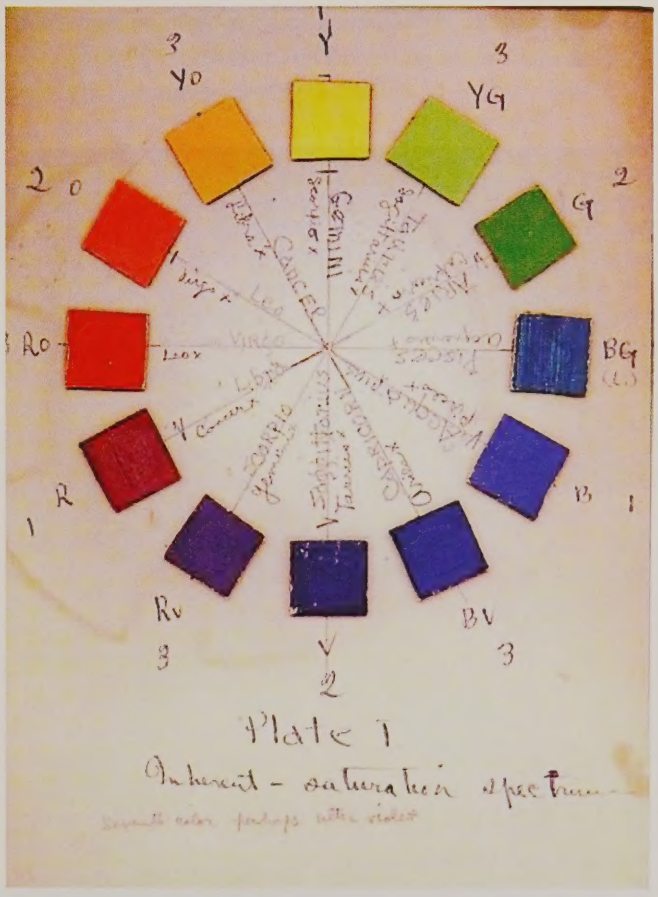

FIGURE 3. Color wheel template painted by Stanton Macdonald-Wright, 1924.

[3] Will South, *Color, Myth and Music: Stanton Macdonald-Wright and Synchromism* (Raleigh, NC: North Carolina Museum of Art, 2001): pp. 32-33.

[4] Ibid., p. 32.

[5] As South notes, for paintings executed in a major key, the intervals corresponded to those in Western music (whole step, whole step, half-step, whole step, whole step, whole step, half-step). Ibid. p. 34.

Although influential, Synchromism was relatively short-lived and never attracted more than a handful of adherents, and then only briefly (e.g., Thomas Hart Benton and Arthur B. Davies). Even Russell, the movement's co-founder, famously gave up painting according to scales after 1916. And while Macdonald-Wright never entirely abandoned his Synchromies, he, too, stopped painting strictly according to scales around 1919.

THE PAINTING

The abstract painting submitted to IFAR superficially corresponded to Macdonald-Wright's classic Synchromist period, around 1916-1917. Consequently, one would have expected that its composition and, above all, its color palette would closely adhere to the artistic principles outlined above. But that turned out not to be the case.

FIGURE 4. Stanton Macdonald-Wright, *Abstraction on Spectrum (Organization 5),* 1914. Oil on canvas. 30 ⅛ x 24 ³⁄₁₆ in. Des Moines Art Center.

IFAR enlisted the help of two leading scholars of American Modernism, both experts on the art of Stanton Macdonald-Wright, who noted inconsistencies with Macdonald-Wright's paintings and artistic theories.

In fact, the painting's very composition, a row of circles arranged horizontally across the picture plane, reflects a misunderstanding of the Synchromist construction of space as a series of oppositions. By contrast, in Macdonald-Wright's *Abstraction Spectrum* **(FIG. 4),** the circular forms spiral dynamically out from the center, growing larger as they radiate out, as if imitating the sound waves from a sustained note as they resonate out from the center.

Even more problematic for a painting purportedly by Macdonald-Wright, both the palette and the arrangement of colors in the IFAR painting are illogical from the point of view of Synchromism. Using Macdonald-Wright's color wheel template, the color scheme in the IFAR painting was analyzed in accordance with *every* possible color key, but *none* was consistent with Synchromist color theory. For example, if the tonic color was the red-orange in the center of the composition, the painting's palette should have been red-orange, yellow-orange, yellow-green, green, blue, violet, and red. And within this key of red-orange, the dominant colors would be red-orange, yellow-green and blue, corresponding to the first, third and fifth notes of a major chord. Therefore, one would expect to see yellow-green and blue placed adjacent to the tonic color (red-orange). Instead, red-orange is placed next to *lavender,* which is not in the color scale at all.

Worse still, the painting's color scheme appeared "indecisive," with volumetric forms broken up into a shifting spectrum of (frequently) muddy colors. Macdonald-Wright's palette was *never* indecisive, as it was pre-determined by whatever he chose as the tonic color. At that point, he only had to choose whether the painting would be executed in a "major key," composed of jewel-like spectral tones, or in a "minor key," made up of those same prismatic colors, but tinted with white. The IFAR painting's mixed and muddied palette of violet-lavender,

orange-pink and brownish-green corresponds to neither.

Even the signature (lower left) is wrong. While Macdonald-Wright signed his paintings variously as "SMW," "S. Macdonald-Wright," and even "S. Van Vranken" (his mother's maiden name), he never included his last name without his first name or initial, as it is here.

FORENSIC ANALYSIS

Scientific analysis reinforced the experts' negative opinions. Four paint samples were analyzed non-destructively using a handheld X-ray fluorescence spectrometer to determine their elemental composition, and then further analyzed by Raman spectroscopy. The spectral analysis revealed that all four samples contained anachronistic pigments.

Prior to the 1920s, the most common white pigments were zinc white and lead white, and that is what we would expect to find in *Synchromy.* Instead, all of the paint samples showed the presence of titanium dioxide, which was not generally available as an artist's pigment until 1921. The presence of titanium white pigments in an early Synchromist painting said to date from 1916-1917, therefore, is highly problematic, if not determinative. Together with the painting's many stylistic inconsistencies; the complete misunderstanding of Synchromist color theory; and the painting's fake signature, IFAR rejected it as a work by Stanton Macdonald-Wright.

How could the faker have gotten it so wrong? After all, Macdonald-Wright intended his manuscript and color templates to be used by artists seeking to apply his color theories. They could, of course, also serve as a "how-to" for fakers. Fortunately, in this case, whoever created the IFAR painting clearly never got around to reading the artist's *Treatise.*

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THEN AND NOW: THE 20TH ANNIVERSARY OF THE WASHINGTON CONFERENCE ON HOLOCAUST-ERA ASSETS

An *IFAR Evening*, December 10, 2018

Left to right: Stuart E. Eizenstat, Monica Dugot, Sharon Flescher (standing), Lawrence M. Kaye, Lynn Rother.

SPEAKERS (IN SEQUENCE)

AMBASSADOR STUART E. EIZENSTAT
Senior Counsel, Covington & Burling LLP; Special Advisor to the U.S. State Dept. on Holocaust-Era Issues; former head of the U.S. Delegation to the 1998 Washington Conference on Holocaust-Era Assets

MONICA DUGOT
Senior Vice President, International Director of Restitution, Christie's;
former Deputy Director, New York State Banking Dept's Holocaust Claims Processing Office

LAWRENCE M. KAYE
Partner, Herrick, Feinstein, LLP; co-chair of the firm's Art Law Group

LYNN ROTHER
Senior Provenance Specialist, Department of Painting & Sculpture,
The Museum of Modern Art, New York

Moderator, SHARON FLESCHER
Executive Director, IFAR

EDITOR'S NOTE/INTRODUCTION

On December 10, 2018, to a full auditorium at Scandinavia House in New York, we hosted an IFAR Evening commemorating the 20th anniversary of the landmark Washington Conference on Holocaust-Era Assets, including an analysis of how art restitution had changed in the intervening years. A major outcome of the 1998 Conference was the publishing of the Washington Conference Principles on Nazi-Confiscated Art, signed by 44 countries including the U.S. The Principles were distributed at the IFAR program and are published below.

Among IFAR's distinguished speakers was Ambassador Stuart E. Eizenstat, U.S. Under Secretary of State in 1998, who had organized the Conference. Three other IFAR Evening participants, attorneys Lawrence Kaye and Monica Dugot, and the program moderator, Dr. Sharon Flescher, IFAR's Executive Director, had also participated in 1998 as members of the Advisory Roundtable convened by Ambassador Eizenstat in advance of the actual Conference. Rounding out the IFAR program was Dr. Lynn Rother, the provenance researcher for MoMA in New York, who spoke about the efforts of the museum community today to research all objects prior to acquisition or already in their collections to identify art possibly tainted by Nazi looting – one of the legacies of the Washington Conference.

Two weeks prior to the IFAR program, the German government hosted a 3-day international conference in Berlin, also in commemoration of the 1998 Washington Conference. Several of IFAR's speakers were in attendance, and Ambassador Eizenstat gave one of the keynote addresses. Instead of stealing the thunder from IFAR's program, however, the Berlin Conference raised issues and exposed divisions that informed IFAR's program. Below are the edited talks and Q&A from the December 10, 2018 program.

U.S. Department of State

Diplomacy in Action

Washington Conference Principles on Nazi-Confiscated Art

Bureau of European and Eurasian Affairs

[*Released in connection with The Washington Conference on Holocaust Era Assets, Washington, DC, December 3, 1998*]

In developing a consensus on non-binding principles to assist in resolving issues relating to Nazi-confiscated art, the Conference recognizes that among participating nations there are differing legal systems and that countries act within the context of their own laws.

1. Art that had been confiscated by the Nazis and not subsequently restituted should be identified.

2. Relevant records and archives should be open and accessible to researchers, in accordance with the guidelines of the International Council on Archives.

3. Resources and personnel should be made available to facilitate the identification of all art that had been confiscated by the Nazis and not subsequently restituted.

4. In establishing that a work of art had been confiscated by the Nazis and not subsequently restituted, consideration should be given to unavoidable gaps or ambiguities in the provenance in light of the passage of time and the circumstances of the Holocaust era.

5. Every effort should be made to publicize art that is found to have been confiscated by the Nazis and not subsequently restituted in order to locate its pre-War owners or their heirs.

6. Efforts should be made to establish a central registry of such information.

7. Pre-War owners and their heirs should be encouraged to come forward and make known their claims to art that was confiscated by the Nazis and not subsequently restituted.

8. If the pre-War owners of art that is found to have been confiscated by the Nazis and not subsequently restituted, or their heirs, can be identified, steps should be taken expeditiously to achieve a just and fair solution, recognizing this may vary according to the facts and circumstances surrounding a specific case.

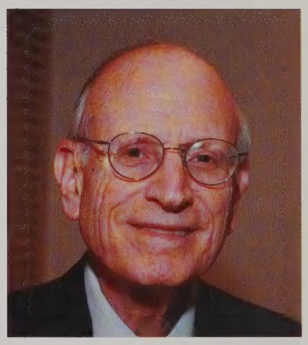
9. If the pre-War owners of art that is found to have been confiscated by the Nazis, or their heirs, can not be identified, steps should be taken expeditiously to achieve a just and fair solution.

10. Commissions or other bodies established to identify art that was confiscated by the Nazis and to assist in addressing ownership issues should have a balanced membership.

11. Nations are encouraged to develop national processes to implement these principles, particularly as they relate to alternative dispute resolution mechanisms for resolving ownership issues.

THEN AND NOW: THE 20TH ANNIVERSARY OF THE WASHINGTON CONFERENCE ON HOLOCAUST-ERA ASSETS

STUART E. EIZENSTAT*



Thank you very much, Sharon. You are an inspiration. We have known each other for a very long time, and your leadership of IFAR is exemplary.

It is a pleasure to be here with my fellow panelists, almost all of whom I've known for many years. And, while it is always dangerous to single out attendees, because you offend others, I will take the risk because there is someone who is very instrumental in Monica Dugot being on this panel and in my being part of the Christie's Advisory Board. That is Stephen Lash, Christie's Chairman Emeritus. We first met at the Vilnius Conference in Lithuania in October of 2000. Stephen has been a leader in getting Christie's engaged in implementing the Washington Principles. I also want to recognize the Rosenberg family, whose elder stateswoman, Elaine, was a central figure in my 2003 book.

"... this may be our last opportunity to right, in some imperfect way, one part of this most ghastly crime in human history before all of the remaining four hundred thousand Holocaust survivors around the world breathe their last breath."

The Holocaust was the most ghastly genocide in human history. It was also the greatest theft, not simply to get money for the Third Reich, but to wipe out all vestiges of Jewish culture by stealing artworks, other cultural objects, books, photographs, and musical instruments. Now more than seventy years after the end of World War II, and almost exactly to the day, twenty years after the Washington Principles on Nazi-Confiscated Art, which I helped draft and negotiate, this may be our last opportunity to right, in some imperfect way, one part of this most ghastly crime in human history before all of the remaining four hundred thousand Holocaust survivors around the world breathe their last breath.

The impetus behind the Washington Principles on Nazi-Confiscated Art was not simply to return masterpieces, although, these certainly have been returned. Rather, the vast majority of what was stolen, six hundred thousand paintings, had a value to families that went far beyond their current market value. One of my dear friends, for example, Roman Kent, a survivor of the Lodz Ghetto, with whom I negotiate with Germany for the Jewish Claims Conference, said that, for him, the theft of the painting of his mother that his father commissioned was the loss of his *Mona Lisa*. Of those six hundred thousand paintings, at least one hundred thousand have never been identified. When one adds furniture and china, coins, and items of decorative arts, the numbers stolen and confiscated swell into the millions.

As they crossed the German border toward the latter part of the war, art curators and historians

* Ambassador Stuart Eizenstat is Senior Counsel at Covington & Burling LLP and heads the firm's international practice. He is currently Special Advisor to the U.S. State Dept. on Holocaust-Era Issues and was head of the U.S. Delegation to the 1998 Washington Conference on Holocaust-Era Assets.

called Monuments Men were embedded into the U.S. Army and were instructed to find as many of the looted objects as possible, to take them to collection points after the war, catalogue them, and then return them not to their owners, which was impossible to do under the chaos of the end of the war, but rather to the countries from which they had been confiscated by the Nazis. They were relying on each of those governments, France, The Netherlands, Germany, and others, to trace the owners and ultimately return the stolen property. Unfortunately, this reliance was often misplaced. Many of the works that were returned by the Allies to the countries after the war were instead incorporated into their public museums rather than given back to their owners. That's where they are to this day.

"We have made great strides toward achieving the goals of the Washington Principles, which were, in simple form, to identify, to publicize, and to restitute using "just and fair solutions," a phrase that I developed, to compensate for this loss."

To try to rectify this injustice decades later, my team at the State Department called for a conference, which is called the Washington Conference on Holocaust-Era Assets, that concluded on December 3, 1998. We negotiated the Washington Principles on Nazi-Confiscated Art with forty-four countries, reaffirmed by the Vilnius Forum in 2000 and the Terezin Declaration following a conference in Prague in 2009. We have made great strides toward achieving the goals of the Washington Principles, which were, in simple form, to identify, to publicize, and to restitute using "just and fair solutions," a phrase that I developed, to compensate for this loss. We also have much left to do.

The Washington Principles are not legally binding, but they are an example of the impact that moral principles for a just cause can have. There were many, after the Washington Conference, who said, "These won't have any impact. They are not legally binding. They'll be forgotten." That is not the case. If anything, particularly in the run-up to the recent Berlin Conference, there was an additional sense of urgency. A fair assessment of the success of the Washington Principles is that the glass is half-full. But, that is not satisfactory. It is now time for one last push to correct the flaws in implementing the Washington Principles both in the U.S., and particularly in Europe, whose museums and private collections still possess Nazi-looted art.

With the assistance of the advanced digital technology that did not exist at the time of the Washington Conference twenty years ago, there is no excuse for failing to have the widest distribution of information on Nazi-looted art and cultural property, including books. No state, no museum today, whether state-controlled or private, no art gallery or collection, no auction house, no private owner should want to hold Nazi-looted art, which was stripped in the most violent way from its original owners. Every nation – and there were forty-four that committed to the Washington Principles and forty-six that signed the Terezin Declaration – should redouble their efforts to identify, publicize, and restitute or compensate or find other just and fair solutions when an owner or heir has a legitimate claim.

SUCCESSES OF THE WASHINGTON PRINCIPLES

Let's look at the successes of the Washington Principles, the **first one** of which is that it has changed the way the art market does business. When you and I buy a simple house, we do a title search to make sure we're getting good title. That is not the way the art world worked before the Washington Principles. You simply relied on your immediate seller. At the Washington Conference, Philippe de Montebello, then head of the Metropolitan Museum, said that the Washington Principles "have changed the art world forever. The art world will never be the same. The psychology you set has changed." Art dealers, galleries and museums now check the ownership of paintings from Europe during this crucial period,

1933 to 1945, to determine if there are gaps that might indicate that the painting was confiscated, and, if so, they post them on websites. Museums now will hardly ever take, whether as a gift or purchase, an artwork without going through this provenance research.

A **second** success is that provenance research itself, a field hardly known before, has proliferated. Websites are increasingly enabling Holocaust survivors or their heirs to locate art looted from them or their families. More nations and non-governmental organizations (NGOs) are doing provenance research and posting results on the Internet. This is a first crucial step in implementing the Washington Principles. If the provenance research is not done, if it's not published, it is impossible to know if you have a potential claim.

The pathbreaker was Ambassador Ronald Lauder, who, before the Washington Conference, established the Commission for Art Recovery in the pre-digital era. At the Berlin Conference, he announced with the Jewish Claims Conference, the new Digital Cultural Recovery Project to develop a database of databases, of all the ones that exist today, to help make it easier for claimants to locate their art.

> "The Washington Principles are not legally binding, but they are an example of the impact that moral principles for a just cause can have."

The American Alliance of Museums has posted almost 30,000 works of art from 179 American museums on its Nazi-Era Provenance Internet Portal. The purpose of this Portal is that a claimant, instead of going from museum to museum to museum, can go through the portal, which connects to the 179 museums. They will do the provenance research to determine if they are in possession of the painting in question.

A third success is that the Washington Principles have spurred five European nations to create, as we intended, and specifically said in the Washington Principles, dispute-resolution panels to resolve claims in a non-litigation format. Germany, Austria, The Netherlands, France, and the U.K., flawed though they are, as I'll describe later, have functioning panels to resolve disputes and to lead to restitution or compensation wherever possible.

Fourth, international cooperation has begun to sprout. In 2017 and continuing through 2019, there is a new German-American provenance research exchange program, called PREP, with German museums and our Smithsonian, the Getty, and the Met. France and Germany are beginning to discuss joint programs. And, in October of 2018, the German Federal Government, through its excellent arts commissioner, Monika Grütters, announced a new memorandum of understanding with the Israeli Government, in light of their joint cooperation in researching the Gurlitt Art Trove that was found in a small apartment in Munich. The collection will be exhibited next year in Israel.

Fifth, despite all of the legitimate frustration, a very sizable number of Nazi-looted artworks has indeed been restored to the owners, or compensation given in lieu of restitution. Austria has restituted over 30,000 objects; the German government 16,000: 5,746 art objects and over 11,000 books. Just before the Berlin Conference, forty-two Dutch museums discovered over 170 artworks in their collections with problematic histories during their Nazi occupation. The Association of Art Museum Directors announced at the Berlin Conference that American museums have returned or resolved satisfactorily almost sixty claims.

Here let me say something that I think is one of the single accomplishments of the Principles, and that is cleaning up the art trade in the United States. The leader was Christie's, and Sotheby's too. And, here is something quite remarkable, if you are a consignor or you have a client who wants to auction art at either Christie's or Sotheby's, they now have specific contracts saying that before they sell or auction any art, they will search all of the existing databases to find if that particular piece of art went through European hands between 1933 and

1945. If it did, they will not sell it or auction it until they are fully satisfied that it has good provenance. Monica Dugot will give you more details. Christie's actually published guidelines in 2009. In the twenty years since the Washington Principles, Christie's has satisfactorily resolved over 200 claims. And, Sotheby's has done likewise, although a smaller number. It is an amazing story of leadership in the private art market.

SHORTCOMINGS

I admit that there have been major shortcomings in implementing the Washington Principles. **The first** is that several key countries don't abide by them. They either ignore them or do almost nothing to advance them. Hungary and Poland, Spain and Russia, and even Italy have done virtually nothing to restitute art. There are others as well, including many Latin American countries, like Argentina, where Nazis fled.

Second, there has been insufficient provenance research in collections and insufficient resources devoted to it. This is not just a technical issue. If you don't look at your collections and publish them, nothing else works in terms of claims. It's the predicate for everything else. The fact is that most key countries do not devote sufficient funds and human resources to expedite provenance research. So it proceeds, at best, at a snail's pace. It is critically important that the U.S. be the exemplar for the rest of the world. We've done much, but not enough. Our museums are constrained by the lack of funds. Unlike museums in Europe, which are largely publicly funded, our museums are private, and they don't devote the resources necessary. It's simply a low priority. I hope that the Association of Art Museum Directors will do a thorough study of how its 242 member museums have complied with the Washington Principles. We know that budgets are tight, but this should be a priority. Do it once and do it right.

There *are* examples of those who have done so. The Boston Museum of Fine Arts, for example, has done an exemplary job. At the Berlin Conference, there was a terrific presentation by the provenance researcher at The Metropolitan Museum of Art, which has digitized over 350,000 pieces in its collection. They will soon be finished with the additional 100,000. Most museums in Europe, however, have done absolutely nothing. They've hardly started provenance research and are nowhere close to completing the research if they did. With very few exceptions, they have made almost no progress.

Let me mention France and The Netherlands in particular, because they were key repositories when the Monuments Men collected this art and then returned it. In France, the MNR collection (Musées Nationaux Récupération) comprises works that were taken by the Nazis from French Holocaust victims, brought to Germany, and then returned to France after the war, but not fully restituted. Likewise, in The Netherlands, with their so-called NK collection (Nederlands Kunstbezit-collectie), consisting of works that Nazi occupiers took from Jews in The Netherlands and were returned to The Netherlands after the war. To its credit, in 2017, for the first time, France has now disclosed all of its MNR Collection. But, here's the problem, France has done almost nothing with its other public collections, the Louvre, the Jeu de Paume, the other famous museums in Paris. The Netherlands has done virtually nothing with its public museums, except for the NK collection. Thousands of paintings still have to be published and researched. This is essential.

"It is critically important that the U.S. be the exemplar for the rest of the world. We've done much, but not enough. Our museums are constrained by the lack of funds. …"

In Switzerland, there has been some restitution and some provenance research. But, because many Jews who were fleeing the Nazis between 1933 and 1945 sold their art in Switzerland to survive, what has been done is insufficient. The biggest contribution Switzerland could make in implementing the Washington Principles would be to open their private

museums and the archives of their art dealers to provenance researchers.

Many German federal museums have done significant research and have posted databases of their artworks. But, these are federal museums. In Germany, most cultural property is under the jurisdiction of what they call "Länder," states. Although the Länder signed onto the Washington Principles in 1999, they have learned virtually nothing and the federal government needs to do more to prod them. Indeed, I would suggest the federal government actually take over the enterprise entirely.

Third, several European art advisory panels have significant flaws. France, for example, has no deaccession laws, so even if the family locates a looted work in a public museum in France, the artwork cannot be taken out of the collection. The most that can be done is monetary compensation.

"To its credit, in 2017, for the first time, France has now disclosed all of its MNR Collection. But, here's the problem, France has done almost nothing with its other public collections ..."

The Netherlands is, in many ways, the most disappointing, because it started in 2003 with an enviable record. They did excellent provenance research. They returned hundreds of artworks. Then, suddenly, starting five to seven years ago, they adopted a new policy called the Balancing Policy, in which they balance the importance of the looted Nazi artwork in their collections against the claimant's emotional claim to the art. That is 110 percent contrary to the Washington Principles. I said so in Berlin; I'm saying so now. This is a country that needs to go back to where it was and abandon this concept of balance. When we talked about just and fair solutions in the Washington Principles, it wasn't just and fair solutions for the public museums to keep the looted art, for goodness sake. It is not right, and I hope that they'll rectify it sooner rather than later.

Another problem with panels is epitomized by the German Limbach Commission, which previously had very opaque rules. In fifteen years, it heard only fifteen cases. In part, this was due to the principle that participation was voluntary. If the museum, even a federal museum under the jurisdiction of the federal government, did not wish to participate in the Commission's review of a claim, the claim couldn't go forward. But recently, in Berlin, we negotiated a government to government agreement, which I signed, along with my colleague, Thomas Yazdgerdi from the State Department, on behalf of the U.S. Government, and Monika Grütters (the German Minister for Culture and the Media) signed on behalf of the German Government, wherein Germany agreed to make several major changes: The first is that on threat of the withdrawal of all federal funds, German museums must now participate in any claim that's filed before the Limbach Commission.

In addition, there are several references in the joint declaration to the "need to go further." They made reference to how to handle heirless art, more on that shortly. Importantly, they reaffirmed – and this has been an unfair escape route for many countries – that the Washington Principles apply not just to public museums, but to privately held collections and museums as well, and called on their private collections, auction houses and private dealers to comply with the Washington Principles. They are training more provenance researchers and giving more money to their federal museums for provenance research. In fact, they have gone from 1 million to 7 million. So, there is important progress there.

Our own experience in the U.S. underscores the mixed report card in the twenty years since the Washington Conference. Mind you, we do have a unique situation. As I mentioned, our museums, except for the National Gallery, are almost exclusively private, not public as in Europe. There is also a sheer magnitude. The U.K. has 3,000 public museums, Germany 6,000. We have over 35,000 largely private museums. But, having said that, the Washington Principles were heavily influenced by

the U.S.-based Association of Art Museum Director guidelines, published in 1998, six months before the conference. I basically internationalized them in my Washington Conference negotiations..

As I mentioned, some 30,000 items were posted by museums on the AAM's Nazi-Era Provenance Internet Portal. But, here's the flaw. By their own admission, the software is so outdated that it's almost not usable. It is particularly disappointing, as well, that after a great start creating the portal and undertaking provenance research, starting maybe ten years ago, American museums began to act totally contrary to the spirit of the Washington Principles, which was to decide on the merits who owned a particular artwork, not use technical defenses. Suddenly, they started to raise statutes of limitation, laches, jurisdiction, and even preemptive injunction suits, before claims were made. Now, gratefully, the U.S. Congress did the right thing by passing in 2016 what's called the HEAR Act, the Holocaust Expropriated Art Recovery Act. This provides a federal statute of limitations of six years, but only after a claimant locates and identifies the art. It resets the clock for those cases that were dismissed on statute of limitations grounds. In other words, museums were raising statute of limitations defenses, saying "Well, you had many years." The claimant, however, had no way of knowing where the art was. This is very important and I hope it will lead to more American museums settling claims rather than going to court. In 2018, Congress again acted with something called the JUST Act, which requires the State Department to report, by November 2019, on how all the countries have done, to provide a report card if you will, on implementing the 2009 Terezin Declaration, which was the follow-up to the Washington Principles.

SUGGESTED ROAD MAP

Let me conclude with a suggested road map for the future based on the twenty years of experience since 1998. **First**, we now appreciate the fact, which we did not understand fully in 1998, that confiscation took many forms. It wasn't just a Nazi coming into your apartment, ripping out your painting, and sending you to Auschwitz. It was more sophisticated. What we now mean by confiscation includes forced sales. There were tens of thousands of German Jews and other victims, who, in order to pay the exit taxes to get out by September 1, 1939, when the war formally started, would sell their artworks at bargain basement prices just to have enough money to pay the exit taxes. This is now clearly covered by the Terezin Declaration. It also includes what are called flight sales, and Germany's been a leader in this. Flight sales refer to cases where a family sold their art to get out of Germany, then went to Switzerland or some other neutral country, and, having no resources because they had to leave their bank accounts and everything behind, sold at below market value perhaps one or two paintings they could take with them. We call this flight sales. These works are also to be recovered.

Second, provenance research is expensive and hard work. It requires human resources and people who are really trained. Here, The Netherlands have set an example by expanding their research to include not only art acquired by their museums before and during the war, but also donations that have come later. And, Germany, again, has set a standard by allowing private collections, private museums, dealers, collectors, to get German federal money to help with provenance research. This is a major breakthrough. Israel will shortly launch a nationwide program of provenance research for its museums and will provide public funding to train provenance researchers with international experts in the field.

"Provenance research is expensive and hard work. … And, Germany, again, has set a standard by allowing private collections, private museums, dealers, collectors, to get German federal money to help with provenance research. This is a major breakthrough."

Third, descriptions of all the collections of public museums should be published on accessible

websites with accompanying provenance research, down to the object level.

Fourth, the Washington Principles have to be implemented by all forty-four countries.

Fifth, nations should diligently research and identify *all* of their collections. So, France and The Netherlands should not just look at their MNR and NK Collections, but all of their public collections. There is no excuse for not doing so, and that's what the Washington Principles require.

Sixth, all countries that have Nazi-looted art in their public museums should pass deaccession laws that permit them to return confiscated art in their possession to the rightful owners or revise their laws to enable private museums to do the same. This is particularly important and urgent for France.

"I've called in Berlin, and I am calling now, for private art dealers and private auction houses in the key countries in Europe to follow the example that Christie's has done with their published guidelines and Sotheby's as well."

Seventh, the Washington Principles, as our joint declaration of November 2018 with Germany in Berlin indicated, apply equally to private collections and private art trade, not just to public museums. There are museums, like the Thyssen Bornemisza in Madrid, that are saying they are private, that the Principles don't apply to them. Not so! European nations have not successfully addressed Nazi-looted art in their private collections. I've called in Berlin, and I am calling now, for private art dealers and private auction houses in the key countries in Europe to follow the example that Christie's has done with their published guidelines and Sotheby's as well. Major auction houses in continental Europe should adopt a similar policy to cleanse their art trade of tainted goods. Who would want to deal in looted and stolen products to begin with, let alone Nazi-looted art? I also call on the Art Dealers Association of America to have all of its members, through the ADAA Code of Ethics, follow the Washington Principles, to ensure that the American private art market has the highest standard of transparency and integrity and is not tainted by Nazi-looted art. Switzerland has made a good start in regulating its private art market. But, it is not clear that it applies to Nazi-looted art.

Eighth, nations with public museums should establish one point of contact for claimants instead of sending them from one agency to another. In the U.S., because we're private, the only agency that exists, and it does an exemplary job on an unbelievably short budget, is the Holocaust Claims Processing Office of the New York Department of Financial Services. It was set up in 1997 under Governor George Pataki, but it needs more resources from the New York State Government.

Ninth, there should be no time limit on bringing claims if the complete identification and location of the artwork was not previously known. Once it is, then reasonable time limits can be set.

Tenth, decisions by national panels, like the ones that I mentioned in Germany, Austria, The Netherlands, France, and the U.K., should be posted on the Internet like court decisions. The reasons for the decision, either restitution or no restitution, given in detail, should also be published, in several languages, so they can serve as guideposts for future action.

"Who would want to deal in looted and stolen products to begin with, let alone Nazi-looted art?"

Eleventh, as a former Ambassador to the European Union, I can say that the EU has been a laggard for twenty years, but that is changing. I hope that the European Parliament will soon pass landmark legislation recognizing the Washington Conference and the Conference Principles on Nazi-Looted Art. The legislation states that insufficient attention has been

paid by the EU to restitution and urges the European Commission, the EU's executive arm, to support the cataloguing of all data on looted cultural goods, as well as the setting up of principles for dealing with cultural property in future conflicts.[1] Importantly, at the Berlin Conference, France and Germany said that, in the spirit of the Washington Principles, they will start looking at the art that was confiscated during the Colonial Period.

And, **twelfth and last**, and most difficult, is heirless art, art where there is no person or family identified, not even an heir. This is directly covered by the just and fair solutions standard of the Washington Principles. But, admittedly, it presents daunting challenges. With improved databases, however, and more detailed provenance research, and more readily available genealogical information, additional efforts should be made to locate heirs. Where, even after that, no heirs can be identified, heirless art can be used as an educational tool so young children and even adults can understand about looted art. Wherever heirless art is exhibited – in the Louvre or elsewhere – it should say, "This was looted from an unknown Jewish family during the Holocaust." The MNR collection is now doing that in France.

"We have come a very long way in the right direction these past twenty years. It is now time to rise to the challenge by going the rest of the way."

Austria, which has been a leader on this point, has come up with a very creative solution. Once they go through all of the databases, once they have made every effort, they will sell the heirless art and use the proceeds for Holocaust survivors from Austria. In any event, heirless Nazi-confiscated art from Jews and other victims should not be considered "owned" by the collections in which the art is now based. They are, at most, trustees for it. Solutions should be the product of dialogues between governments, Jewish communities, international organizations, and the State of Israel.

In conclusion, we have come a very long way in the right direction these past twenty years. It is now time to rise to the challenge by going the rest of the way. We owe it to those from whom the artworks were stolen. We owe it to our own conscience. We owe it to the morality of the twenty-first century. We can do it and must do it. Thank you very much.

[1] On January 17, 2019, the European Parliament passed such a resolution, to be reviewed by the European Commission.

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CONT. ➔

THEN AND NOW: THE 20TH ANNIVERSARY OF THE WASHINGTON CONFERENCE ON HOLOCAUST-ERA ASSETS

MONICA DUGOT*

I am delighted to be here today to discuss the Washington Conference and how far we've travelled in the last 20 years **(FIG. 1).** It feels like only yesterday that we gathered in Washington to discuss art restitution, then still a relatively new topic, certainly at the high governmental echelons represented there. The focus at the November/December 1998 Conference was primarily on Holocaust-Era insurance claims, banking, issues of communal property, as well as remembrance. The renewed focus on art restitution was only a couple of years old, and I must tip my hat to Stu Eizenstat: it really was an achievement to get 44 countries to agree to the 11 Washington Principles on Nazi-Confiscated Art, what would become the bedrock foundation of the next two decades of art restitution work.

BACKGROUND – THE WASHINGTON CONFERENCE & PRINCIPLES

I was privileged to participate at the pre-Washington Conference Advisory Roundtable in my role as Deputy Director of the Holocaust Claims Processing Office. I had started my job with the HCPO a little short of a year earlier. The office had been established as an 18 months' project to assist claimants with a wide range of long-unresolved Holocaust-related claims. The bulk initially were claims against the Swiss banks. Claims against the European insurance companies soon followed and by December 1998, there was an ever-increasing number of claimants pursuing lost, looted or stolen artwork. I believe that at the time of the 1998 Conference, the HCPO had already received more than 60 art claims and close to 300 telephone inquiries.

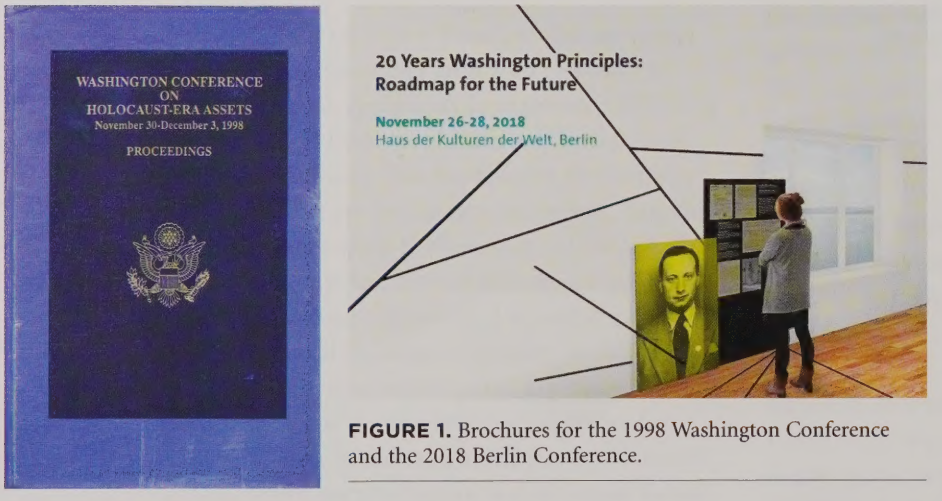


FIGURE 1. Brochures for the 1998 Washington Conference and the 2018 Berlin Conference.

* Monica Dugot, Esq. is Senior Vice President, International Director of Restitution at Christie's. Prior to joining Christie's, she was Deputy Director of the New York State Banking Department's Holocaust Claims Processing Office.

I have just returned from Berlin, where I – and others here – took part in an international conference hosted by the German Lost Art Foundation about the legacy of the Washington Conference, its art restitution Principles, and how the hopes and aspirations of the Washington Conference Principles have been implemented. In 1998 when we convened, we were grounded by the desire to tackle the issues of art looting, and this ultimately led to the formation of national bodies in several countries tasked with reviewing their national and institutional collections. The Washington Principles established the litmus test that resolutions to claims should be "just and fair." In the United States, the Association of Art Museum Directors had already issued guidelines for museums to handle Holocaust claims; what was then called the American Association of Museums soon issued guidelines; and the Art Dealers Association of America eventually issued guidelines for its members.

In many respects the Washington Principles have been successful. They have provided the impetus for our art restitution efforts and a lens through which we have viewed claims-handling and art restitution. But I think we underestimated in 1998 the scale and the scope – and indeed the complexity – of the challenge that lay ahead of us … and still does.

CHRISTIE'S RESTITUTION DEPARTMENT

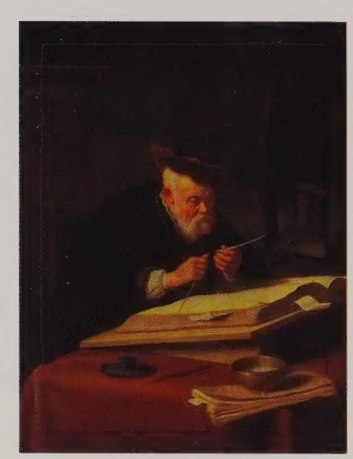
Stu has discussed his impressions of our field's successes and failures over the last 20 years. I would like to focus my remarks on what I have seen from my vantage point at Christie's and the continuing challenges that lie ahead. We in the international art market find ourselves on the front lines of responding to the legacy of the voracious and unfathomable looting and displacement of art during WWII and the Holocaust.

> "I think we underestimated in 1998 the scale and the scope—and indeed the complexity—of the challenge that lay ahead of us … and still does."

It is self-evident that the art market – Christie's, other auction houses, dealers, museums and collectors – needs to be constantly vigilant and alert to restitution issues. We at Christie's sell tens of thousands of artworks each year – notable because of the very large number of works we handle, not just for their cumulative financial value. The art market is a net for catching looted art **(FIG. 2)** and gives us an almost unique position to contribute to the work of restitution.

We receive and must respond to dozens of claims each year and, in some cases, it is we who find possible signs of looting, causing us to initiate the resolution process.

FIGURE 2. Some works Christie's helped restitute in 2018.



Salomon Koninck (Amsterdam 1609-1656)
A scholar sharpening his quill

Provenance:
John Pemberton Heywood, Esq., Norris Green, Lancashire and Cloverly Hall, Shropshire; (†) his sale, Christie's, London,
10 June 1893, lot 53 (378 gns.).
Hon. Mrs. Denham collection.
with Sedelmeyer Gallery, Paris, by 1900.
Adolphe Schloss (1842-1910), Paris, and by descent;
Confiscated by the Nazi authorities, 1943; transferred to the Führerbau, Munich, from where looted, April 1945.
Walter Andreas Hofer, Munich, by 1952;
Private collection, Chile, acquired from the above and by descent.

FIGURE 3. Salomon Koninck, *A Scholar Sharpening His Quill,* 1639. Confiscated from the collection of Adolphe Schloss.

The thousands of items we look at each year span nearly all categories of art: paintings, drawings, books, sculptures, porcelain, furniture and so on. We research them for potential issues. To do this, we have an experienced team with considerable knowledge and expertise and a body of information and documentation that has grown over the last 20 years. We might consult as many as a dozen online databases or sources. When we identify a potentially problematic item, we research it until we can draw a conclusion about its status or we have made a reasonable assessment of the risk involved in selling it.

This work is difficult: A painting's appearance can change with heavy restoration. There may be a lack of tangible history for more financially modest works of art, such as works on paper which historically had limited market value, but may be viewed today as very special. Or, quite simply, there is a risk of confusion because the original description is vague and artists frequently create multiple similar works. So, despite our best endeavors, we will inevitably miss things. Because many of the databases we use are active and are being updated, because numerous private archives remain unavailable for research, and because the research remains subjective in interpretation, a work thought to be clear of potential issues at one point in time can later be found to be problematic when new information comes to light.

Twenty years ago, when the Washington Principles were drawn up, we all thought in terms of Nazi confiscation. Today our understanding of restitution claims means we are not just looking for artworks that were clearly confiscated and recorded by Nazi looting units like the ERR (that is, the Rosenberg Action Team), but we also must consider whether something may have been sold under duress because persecuted individuals became impoverished and needed money to pay flight taxes, for example, or to fund a new life beyond the Nazis' reach.

The restitution cases we deal with on a day-to-day basis are generally for artworks that are in private hands and come to us as auctioneers, but they force us to become intermediators and facilitators of amicable settlements.

Many of the artworks we would all deem problematic are not clear-cut cases, so there are a great number of obstacles to overcome in convincing private collectors or private entities to deal forthrightly with the issue. This is often difficult, particularly if there is a sale in process and the collector faces a potential financial loss. Moreover, many collectors who bought artworks in good faith and believe they have good title do not see it as their personal responsibility to make amends for the past. We, however, have to find strategies to overcome this reluctance so that difficult cases don't all become protracted lawsuits.

Christie's method has been to promote fair and amicable resolutions, often by pragmatic settlements. Not all agree with this approach, but Christie's has resolved or returned 40 artworks in the last 5-6 years alone, and we've handled over 200 claims since 1998.

To give you a flavor, I want to share a recent case with you involving a painting of *A Scholar Sharpening His Quill* by Salomon Koninck **(FIG. 3)**. The

"Not all agree with this approach, but Christie's has resolved or returned 40 artworks in the last 5–6 years alone, and we've handled over 200 claims since 1998."

painting was consigned to us from a private collection in Chile. When it arrived, it went through the standard process of cataloguing and vetting, and during this process, we flagged it as having been one of those works famously confiscated from the collection of Adolphe Schloss in France during the Occupation. The Schloss Collection, one of the largest in pre-War France, was known for its Old Master paintings and had been coveted and targeted by the Nazis from the start. The collection was intended for Hitler's Linz museum and, after seizure, was stored at the Führerbau in Munich, where it suffered a second looting. With the fall of the regime imminent in April 1945, the Nazi guards who were posted to protect the building, deserted, and there followed a night of looting by residents.

We don't know exactly what happened to the Koninck, but it turned up on the Munich art market in 1952 in the hands of Walter Andreas Hofer. Hofer had been one of the key agents for Hermann Göring during the war. He was convicted in absentia by the French courts for his art crimes, but did not serve his sentence. Hence, he was free to sell this painting to the father of our Chilean consignor.

Once our research uncovered this claim, we sought to discuss the matter with the Chilean consignor and begin the process of facilitating an amicable resolution of the claim, as is our usual practice. Instead, her family encouraged the Chilean prosecutors to bring criminal charges of fraud against Christie's. At that point, we reached out to the FBI to investigate the matter. When the FBI's investigation confirmed our research and understanding of a Schloss claim, the United States Attorney's Office commenced a forfeiture action, which neither Chile nor our consignor are contesting. As a result, we could share the happy news with the Schloss heirs that the painting would be restituted to them.[1]

We have also just resolved by settlement another painting, a Pieter Codde, which we offered for auction in London this month **(FIG. 4).** Again, our routine review using the Lost Art Database identified it as a painting formerly in the collection of Dr. Arno Siegfeld, a trader in iron from Berlin until he was forced to flee to the Netherlands in 1939. He was also forced to pay the Nazis flight taxes to leave Germany. After the invasion and occupation of The Netherlands, the Old Master paintings he had been able to take with him were confiscated from their storage place in Amsterdam and forcibly sold by the Nazi authorities. This painting of

Pieter Codde (Amsterdam 1599-1678)
An elegant company playing cards

Provenance:
Art Market, Berlin, circa 1928.
Arno Siegfeld (1884-1951), Berlin.
Confiscated at the Philippins & Co. storage depot, Amsterdam, by the German authorities following the occupation of The Netherlands; Van Marle & Bignell, The Hague, 27 January 1942, lot 15 (4,200 guilders), where acquired by, van Wieringen, The Hague (possibly via
H.A.J. Stenger, The Hague).
Acquired by the husband of the present owner in Austria in the 1950s.

Offered pursuant to a settlement agreement with the heirs of Dr Arno Siegfeld.

Old Master Day Sale, December 2018

FIGURE 4. Pieter Codde, ***An Elegant Company Playing Cards,*** 1636. Offered for sale at Christie's, London, December 7, 2018, pursuant to a settlement agreement with the heirs of Dr. Arno Siegfeld.

[1] The painting has since been restituted. See "Manhattan U.S. Attorney Announces Return to Its Rightful Owners of Old Master Painting Stolen by Nazis," April 2, 2019 press release from the U.S. Attorney's Office, SDNY.

turned up on the Austrian art market in the 1950s. By a quirk of fate, it was acquired there by a young Jewish couple whose family ultimately consigned it to Christie's. They, too, had both fled their homes and met while in exile, returning to Austria after the war to restart their lives. Obviously, breaking the news of our findings was difficult, but the consignor was graceful and responsive and, likewise, the Siegfeld estate was open to discussion. Hence, here we could find a compromise leading to the sale of the painting.

REFLECTIONS: LOOKING BACKWARDS AND FORWARD

It is not just a question of addressing Jewish losses, as our work does not happen in a vacuum. In Germany and in Eastern Europe, many of the losses were from government museums, libraries, archives and other public collections. We have been involved in returning a dozen missing artworks to German museums, as well as to museums in Poland and Russia. The most recent return was a Teniers drawing, modest in size and value, to the state museums in Dresden, again identified through our vetting process. In the run up to the 1998 Washington Conference, the possibility of resolving exactly this category of claim was discussed – it was attorney Tom Kline, who was then representing German cultural institutions, who raised the question of whether German museum losses should stand on an equal or similar footing to Jewish art claims. The issue gained little traction 20 years ago, but the growth in claims from German, Russian, Ukrainian and Polish museums has underlined the need for us to be vigilant in this respect too.

At Christie's, we are proud of our commitment to Nazi-Era restitution and our success in resolving issues when we can. And yet it feels like we are busier than ever. We are receiving an increasing number of queries that relate to artworks we have sold in the past, including artworks we have also sold comparatively recently – post-Washington Conference. These are claims where we completed thorough due diligence at the time of the sale, but new information has subsequently come to light that has altered the artwork's status.

I recall at the Washington Conference there was much discussion about the likely duration of restitution as a concern and whether sunset clauses would be needed to draw it to an end. In fact, 20 years on, the Berlin Conference underlined that there is still a lot of work to be done in Holocaust art restitution. Berlin convened not only we "old timers," but also a second generation of researchers and practitioners.

Ultimately, the message from Berlin was mixed. For all the success stories regaled and the recommitments, there was also plenty of dissent and criticism. How far have we come? Why is there still so much to do? Do we share common goals? Do we have the tools to do the work? Should we upgrade the Washington Principles? If so, how? There was consensus and criticism in equal measure.

"The message from Berlin was mixed. For all the success stories regaled and the recommitments, there was also plenty of dissent and criticism. How far have we come? Why is there still so much to do? Do we all share common goals? Do we have the tools to do the work? …"

During the conference and coffee breaks, it transpired, for example, that many people are working on new definitions of looted art – broader than just "confiscation," as I said earlier. But what happens when competing sets of definitions are presented? Do we all have a voice in shaping and critiquing definitions? Will they set a standard? Or will they be applied locally and selectively? Do we have a common and uniform approach to claims?

The question of incentives for private collectors in possession of looted art to come forward was raised, again, but what concrete suggestions are there?

Again, another perennial topic, how do we centralize, manage and make accessible information on Nazi-Era losses? Not a new question and one that was discussed in Washington in 1998, but the idea of a central database has not materialized. We still hope for centralized online sources and the Commission for Art Recovery is leading the way with its Jewish Digital Cultural Recovery Project. Its vision is significant.

Edmund de Waal, artist, author of *The Hare with the Amber Eyes* and descendant of the Ephrussi family victimized in Vienna, addressed the Berlin Conference. He spoke very movingly about the places and spaces laid empty by the Holocaust and the need to reclaim, indeed to 'reverse restitute' Jewish families and their art to the places they had once occupied. It was an important and centering note to a conference that had often veered towards the political or abstract. There were also other family members, descendants of other Jewish families, who spoke emotionally about their own experiences. Many of these stories were about modest artworks, books, ephemera – the real fabric of Jewish homes of the time. One family member, a great grand-daughter of Marcus Heinemann of Luneburg, spoke of how the restitution process brought her a new worldwide family, the scattered descendants of her ancestor. Another spoke of how the acknowledgement of her family's existence and loss might have been enough, but also the steps that the museum's researchers and town officials had taken to welcome, hear and embrace the present-day family was so very welcome too. When all else is said and done, it is this message that is the most important and significant in our work. Telling and hearing the stories of the families lost and displaced during the Holocaust is paramount. Remembering and commemoration is paramount. Art is a tangible memory and through art restitution, restoring and returning art, we can help do this.

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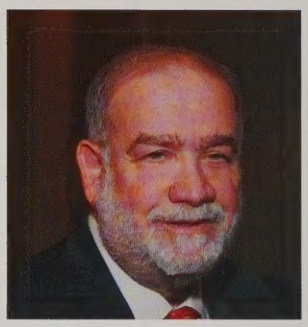
THEN AND NOW: THE 20TH ANNIVERSARY OF THE WASHINGTON CONFERENCE ON HOLOCAUST-ERA ASSETS

LAWRENCE M. KAYE*



In preparing these remarks, I tried to remember what happened at the meeting of experts on art restitution that preceded the 1998 Washington Conference. I recall that we were all filled with a feeling that something of great significance was about to occur, though we were not exactly sure what would transpire.

I do remember one thing in particular: that the representative of the Art Loss Register talked about the statute of limitations and suggested that our work could be accomplished quickly and that a short statute of limitations on claims should be imposed. Instead, twenty years later, we have the HEAR Act,[1] which imposes a national statute of limitations for Holocaust Era claims that is most favorable to charities, and Holocaust claims are still going strong. It demonstrates how far we have come since those early days.

I agree with Stuart Eizenstat and Monica Dugot that a lot of progress has been made; indeed, I have seen it firsthand. The restitution of 200 Old Master paintings and other works by the Dutch Government to our client, Marei von Saher, the sole heir of the famed Jewish-Dutch art dealer, Jacques Goudstikker, whose collection was looted by Hermann Göring himself, and who died while fleeing the Nazi invasion in the Netherlands, was directly due to the Washington Principles.[2] In 2002, the Dutch Government issued new guidelines in light of the Principles, recognizing that the post-War Government had operated its restitution program in a way that was unfair, cold and callous.[3] The Goudstikker restitution occurred as a result of those new and enlightened guidelines. And only recently, on November 27, 2018, a stolen Goudstikker work was restored to Marei by the Virginia Museum of Fine Arts, even though the claim was lodged some ten years ago. I am happy to note that Marei and her daughter, Charlene, who has herself been intimately involved in the Goudstikker restitution efforts, are both here tonight. But, I was sorry to learn recently, as Stu mentioned earlier, that the Dutch have gone a step backwards and imposed a balancing test (weighing the museum's interest in retention against the need for restitution). This recently resulted in the rejection of a claim to a Kandinsky painting,[4] which has created quite a stir.

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* Lawrence M. Kaye is a partner of the New York law firm Herrick, Feinstein LLP and the co-chair of the firm's Art Law Group.

1 Holocaust Expropriated Art Recovery Act of 2016, PL 114-308, December 16, 2016, 130 Stat 1524 ("HEAR Act").

2 https://www.restitutiecommissie.nl/en/summary_rc_115.html.

3 See Ekkart Committee, Recommendations for the Restitution of Works of Art (Apr. 2001), available at https://www.restitutiecommissie.nl/en/system/files/aanbevelingen%20Ekkart2001-ENG_0.pdf.

4 Marsha Lederman, "'A flagrant insult': Kandinsky painting won't be returned to Jewish heirs after 1940 sale during Nazi occupation," *The Globe and Mail*, Nov. 12, 2018.

I do agree that—with varying degrees of success—European nations have been returning artworks lost during the Holocaust Era. The commissions in the UK, the Netherlands, Germany, Austria, and France have been, for the most part, doing their job.

With all deference to Stu, however, and not intending in any way to diminish the extraordinary advances that have occurred as a result of his vision over the past 20 years, I must say that the report card in the U.S. has been mixed at best. As Stu has suggested, there have been some A's and B's, but a lot more D's and F's.

There has been greater utilization of the Washington Principles in Europe, perhaps because the vast majority of museums are State-owned, and Federal governments can — and do— call the shots through their restitution regimes. The Terezin Declaration, adopted in 2009 at a conference in Prague that assessed the impact of the Washington Principles after ten years, has also played a great role in these developments, in part because it expressly made clear that property transferred because of duress or forced sales as a result of Nazi persecution would be treated in the same way as looting.[5] In fact, the various European State tribunals have consistently ordered the return of property sold under duress between 1933 and 1945.

Notwithstanding calls for some sort of commission in the U.S., none has been forthcoming. Instead, the museums have too often seen fit to act as judge and jury, determining for themselves whether Holocaust Era claims have merit, while the State Department has made it clear that the only remedy for Holocaust victims and their heirs is to take their disputes to court – or try to settle. Litigation, however, has not proved an easy path in the U.S. for Holocaust victims and their heirs. The cases have gone on and on – sometimes for more than ten years – often with negative results and with some seeming never to end. The museums, rather than going out of their way to honor and effectuate the principles

"The report card in the U.S. has been mixed at best. As Stu has suggested, there have been some A's and B's, but a lot more D's and F's. … In short, our courts have paid little heed to the Washington and Terezin principles perhaps because they are not binding international treaties …"

of Washington and Terezin, put the claimants to every test. That is why even some cases in which the claimants have seen success along the way are still in court after years of litigation, often making multiple trips to the United States Supreme Court. Many have ended in bitter disappointment for the heirs of Holocaust Era art looting victims.

In short, our courts have paid little heed to the Washington and Terezin principles, perhaps because they are not binding international treaties, and sadly, they are often used in a way to put off or even avoid judgment day. Museums will research a claim to death—sometimes for years—and then argue that they are following the principles, only to deny the claim in the end and fight it in court, asserting technical defenses like the statute of limitations, laches and the Act of State Doctrine along the way, even though the Terezin Declaration specifically states that should not be done.

We thought that all this changed in 2014, when the Ninth Circuit Court of Appeals in Pasadena, California issued a landmark ruling in Marei von Saher's case against the Norton Simon Museum to recover two magnificent life-size portraits of *Adam* and *Eve* by Cranach the Elder that were among the finest examples of Jacques Goudstikker's collection looted by Hermann Göring.[6]

The lawsuit to recover the Cranachs has been up and down the appellate ladder several times since it was commenced in 2007. It was finally dismissed on the basis of the Act of State Doctrine last year, but more of that in a moment.

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5 Terezin Declaration on Holocaust Era Assets and Related Issues (2009), available at https://www.state.gov/p/eur/rls/or/126162.htm.

6 *Von Saher v. Norton Simon Museum of Art at Pasadena*, 754 F.3d 712 (9th Cir. 2014).

In Marei's second trip to the Ninth Circuit Court of Appeals, she appealed a District Court Order granting the Museum's motion to dismiss on the ground that all of her claims were pre-empted by the U.S. policy of external restitution that was in place after the War. The Cranachs had been returned by the Allies to the Netherlands pursuant to that policy so that they could be restituted to the pre-War owner.[7]

In June 2014, the Ninth Circuit reversed, holding that Marei's claims do not conflict with federal policy.[8] In so doing, the Court made a determination about U.S. restitution policy that was unprecedented, and which we hoped would have consequences for future cases. In short, the Court expressly held that U.S. policy on restitution includes the Washington Principles and the Terezin Declaration. It specifically referred to the latter's statement that "encouraged all parties, including public and private institutions and individuals, to apply the Washington Principles."[9] Further, the Court quoted from the Declaration's provisions that "every effort be made to rectify the consequences of wrongful property seizures, such as confiscations, forced sales and sales under duress" and that countries should "ensure that their legal systems or alternative processes ... facilitate just and fair solutions with regard to Nazi-confiscated and looted art, and to make certain that claims to recover such art are resolved expeditiously and based on the facts and merits of the claims ..."[10] The Court expressly added that these tenets are part of U.S. restitution policy.

Overturning the District Court's holding that Marei's claims were barred because they interfered with U.S. restitution policy, the Court found instead that Marei "is just the sort of heir that the Washington Principles and the Terezin Declaration encouraged to come forward to make claims."[11] The Court added that "allowing her lawsuit to proceed would encourage the Museum, a private entity, to follow the Washington Principles, as the Terezin Declaration urged. Perhaps most importantly, this litigation may provide Von Saher an opportunity to achieve a just and fair outcome to rectify the consequences of the forced transaction with Göring during the war."

But, when the case was finally remanded to the District Court, Judge Walter completely ignored the historic language in the Ninth Circuit opinion and ruled instead that Hermann Göring himself had owned the Cranachs after he looted them, and thus they became the property of the Dutch State after the War under its Trading with the Enemy Act.[12] The Court further found that Jacques' widow, Desi, waived her right to recover the looted paintings because she did not bring a post-War restitution proceeding,[13] even though the Dutch Government later found that these proceedings had been conducted in a "legalistic, bureaucratic, cold and maybe even callous" manner, and, indeed, that Desi had never waived her rights to the recovery of the other 200 paintings that had been looted with the Cranachs by Göring. And while, on the appeal from that decision, the Ninth Circuit did not affirm on that basis, it nevertheless closed the door on Marei's case, ignoring the prior panel's historic language on U.S. Holocaust policy and refusing to decide the case in Marei's favor based on the Act of State Doctrine. So, after 12 years of litigation, Marei is heading for the Supreme Court yet again.[14] Not exactly what the Washington Principles and Terezin Declaration had in mind.

The Norton Simon case suggests that there may be a loophole in the Washington Principles. Notwithstanding obvious Nazi looting, where a post-War

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7 *Von Saher v. Norton Simon Museum of Art at Pasadena*, 862 F. Supp. 2d 1044 (C.D. Cal. 2012), rev'd and remanded, 754 F.3d 712 (9th Cir. 2014)

8 *Von Saher v. Norton Simon Museum of Art at Pasadena*, 754 F.3d 712 (9th Cir. 2014).

9 *Id.* at 721.

10 *Id.*

11 *Id.* at 723.

12 *Von Saher v. Norton Simon Museum of Art at Pasadena*, No. CV 07-2866-JFW (SSX), 2016 WL 7626153 (C.D. Cal. Aug. 9, 2016), aff'd on other grounds, 897 F.3d 1141 (9th Cir. 2018).

13 *Id.*

14 *Von Saher v. Norton Simon Museum of Art at Pasadena* (USSUP No. 18-1057).

government implemented weak or perhaps even spurious post-War restitution policies, pursuant to which looted property was not returned to the rightful owner, our courts will not honor the Principles and return the property. I recall that, in opening the Washington Conference in 1998, the Chairman, Miles Lerman, focused on this very point. He noted that:

> What really shocked the conscience of the world was the discovery that even after the war, some countries tried to gain materially from this cataclysm by refusing to return to the rightful owners what was justly theirs. The refusal to respond to these rightful claims was a great injustice, a moral wrong which cannot be ignored.
>
> And this is what brings us together today.
>
> We are here to make sure that these wrongs are corrected in a just and proper manner.[15]

In preparing for this talk, I re-read the opening and closing statements at the 1998 Conference, and I recommend you all do the same, because these words vividly illustrate the promise of the Principles, which remains largely unfulfilled in the U.S., as exemplified by *Von Saher.* The Dutch Government saw fit to apply the Principles to its restitution process, but, so far, our courts have not done the same. Let's see if the Supreme Court takes up the issue of whether a discretionary and quasi technical doctrine like the Act of State Doctrine should be permitted to allow our courts to avoid implementing what the Ninth Circuit earlier ruled is the restitution policy of the U.S.

This is not to say that there have been no successes. There have been many. Marei herself has recovered pieces from The Getty and the Virginia Museum of Fine Arts without litigation. The Guggenheim and MoMA have also returned works. But some of these very same institutions resist other claims; too many litigations have ensued and taken too long. The *Portrait of Wally* case,[16] which my firm handled, started at about the same time as the 1998 Conference. Twelve years later, it finished in favor of the heirs. The *de Csepel* case[17] has been pending in Washington, D.C. for eight years (since 2010), and the *Cassirer* case[18] in Los Angeles for 13 years (since 2005). As Stu just said, the Association of Art Museum Directors (AAMD) reports that there have only been 60 negotiated restitutions by American museums in the last 20 years. When you think about the number of museums and the tens of thousands of objects in them, many of which are on the portal,[19] that is not a good track record.

Where does the U.S. Government stand on this? After the promise of the Washington Principles and Stuart Eizenstat's visionary efforts, the U.S. has more often been an impediment to, rather than a catalyst for, just and fair Holocaust solutions. The U.S. Government initially weighed in against Maria Altmann in one of the first important cases — involving the now famous *Woman in Gold.* Maria ultimately found relief in Austria after more than ten years of U.S. litigation.[20] The Solicitor General opined against Mrs. von Saher's claim in the Norton Simon case in her previous petition to the Supreme Court.[21] And recently, the Solicitor General submitted a brief opposing the claimant's petition for certiorari in the *de Csepel* case.[22] I am not sure that this is what anyone had in mind when the U.S. signed on to the Washington Principles and the Terezin Declaration.

And then there is the question of duress. As I mentioned earlier, the Terezin Declaration expressly states that property sold under duress because of

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15 Miles Lerman, Opening Ceremony Remarks at the United States Holocaust Memorial Museum, Washington Conference on Holocaust-Era Assets, Washington, D.C., 3 (Nov. 30, 1998).

16 *United States v. Portrait of Wally,* 99-cv-09940.

17 *de Csepel v. Republic of Hungary,* 10-cv-01261.

18 *Cassirer v. Kingdom of Spain,* 05-cv-03459.

19 The Nazi-Era Provenance Internet Portal's mission is "to provide a searchable registry of objects in U.S. museum collections that changed hands in continental Europe during the Nazi era (1933-1945)." http://www.nepip.org/public/info/about.cfm?menu_type=info.

20 *Republic of Austria v. Altmann,* 00-cv-08913.

21 Brief for the United States as Amicus Curiae Opposing Petitioners, *Von Saher v. Norton Simon Museum,* No. 09-1254, May 2011.

22 Brief for the United States as Amicus Curiae Opposing Petitioners, *de Csepel v. Rep. of Hungary,* No. 17-1165, Dec. 4, 2018. [The petition for certiorari was denied on January 7, 2019.]

Nazi persecution shall be treated the same as property looted by the Nazis. The tribunals in Europe have *consistently* ruled that artworks lost as a result of duress should be returned. In 2009, Judge Rakoff, in the Schoeps case, ruled that duress was an appropriate ground for restitution, but unfortunately that case was decided before trial and the issue was never finally determined.[23] The Restatement of Restitution also makes clear that duress is a viable basis for a claim.

Nonetheless, when the Federal Court for the Southern District of New York was presented with a duress case in *Zuckerman v. Metropolitan Museum of Art*—where we represent the Plaintiff — despite a dizzying backdrop of duress suffered by Jews on the run from the Nazis in Germany and faced with rising anti-Semitism in Fascist Italy, the Court, on a motion to dismiss, relying on New York cases having nothing to do with the Holocaust and ignoring the lessons of the Terezin Declaration, found that third party duress, resulting from Nazi and Fascist persecution, was not sufficient under N.Y. law. Rather, only duress from the counter-party was sufficient. The case was dismissed.[24] The Leffmann estate has appealed the decision to the Second Circuit Court of Appeals.[25]

Ironically, in a N.Y. State case, *Reif v. Nagy,*[26] decided shortly thereafter, Judge Ramos, in applying the HEAR Act, made it quite clear that the courts are obligated to apply the Holocaust policy of the U.S. Judge Ramos ruled that the case must be viewed in light of the HEAR Act, and in so doing underscored that one of the two purposes of the HEAR Act, as noted in the legislative history, was "to ensure that laws governing claims to Nazi-confiscated art and other property further United States policy as set forth in the Washington Conference Principles … and the Terezin Declaration."[27] And that therefore, the HEAR Act "compels us to help return Nazi looted art to its heirs …"[28] This is consistent with Military Government Law 59,[29] which created (in Germany at least) a presumption that all art sold by Jews during the Holocaust Era was the result of duress, unless rebutted by specific evidence to the contrary. (The *Reif* decision is on appeal at the Appellate Division).

I believe the U.S. has to find its way back to the Washington Principles and the Terezin Declaration. Under Stu's leadership, the U.S. led the way and set the proper tone for the international community to follow, but it has lost its way at home. The HEAR Act is a major achievement – but only if the courts honor it and apply it faithfully. I believe that Judge Nelson had it right in the second *von Saher* appeal, when she underscored that the Washington Principles and the Terezin Declaration are the hallmark of U.S. restitution policy and that, as Judge Ramos recently confirmed, that policy must be applied by the courts.

23 *Schoeps v. Museum of Modern Art,* 594 F. Supp. 2d 461 (S.D.N.Y. 2009).

24 *Zuckerman v. Metro. Museum of Art,* 307 F. Supp. 3d 304 (S.D.N.Y. 2018).

25 *Zuckerman v. Metro. Museum of Art,* U.S. Court of Appeals for the Second Circuit, 18-634.

26 *Reif v. Nagy,* 61 Misc. 3d 319, 324, 80 N.Y.S.3d 629, 633 (Sup. Ct. Cnty. 2018).

27 *Id.* at 323, 80 N.Y.S.3d at 632.

28 *Id.* at 324, 80 N.Y.S.3d at 633.

29 Passed in the U.S. Zone in Germany on November 29, 1947.

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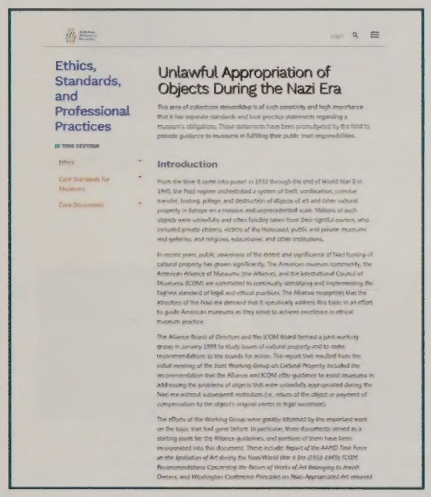
THEN AND NOW: THE 20TH ANNIVERSARY OF THE WASHINGTON CONFERENCE ON HOLOCAUST-ERA ASSETS

PROVENANCE RESEARCH IN MUSEUMS

LYNN ROTHER*

As MoMA's provenance specialist, I will speak, from a researcher's perspective, on what it means for a museum that is committed to doing the right thing. I will also address the "then and now" of provenance research in American museums.

In an effort to follow the Washington Principles, which have already been discussed, the Presidential Advisory Commission on Holocaust Assets and the American Alliance of Museums Museums (former American Association of Museums) soon set about establishing guidelines regarding objects misappropriated during the Nazi Era **(FIG. 1).** The Association of Art Museum Directors had already adopted guidelines. The various guidelines stipulated the need to identify objects that were or might have been in Nazi Europe; to make the currently available object and provenance information accessible; and to continue research, as museum resources allow. The initial focus was to be on European paintings and Judaica. Basically, this was the starting point for systematic Nazi-Era provenance research in American museums. One outcome, already mentioned, was the Nazi-Era Provenance Internet Portal, called NEPIP for short, to which the Museum of Modern Art contributed 620 paintings at the time. As Ambassador Eizenstat said, 179 museums contributed roughly 30,000 objects.


Ethics, Standards, and Professional Practices

Unlawful Appropriation of Objects During the Nazi Era

Introduction

In order to aid in the identification and discovery of unlawfully appropriated objects that may be in the custody of museums, the PCHA, AAMD, and the Alliance have agreed that museums should strive to:

1) **Identify all objects in their collections that were** created before 1946 and acquired by the museum after 1932, that underwent a change of ownership between 1932 and 1946, and that were or might reasonably be thought to have been in continental Europe between those dates (hereafter "covered objects");

2) make currently available **object and provenance information on those objects accessible;**

3) give priority to continuing provenance research **as resources allow.**

The Alliance, AAMD and PCHA also agreed that **the initial focus of research should be European paintings and Judaica.**

FIGURE 1. American Alliance of Museums website showing the guidelines regarding Nazi-era looted art.

* Lynn Rother, Ph.D. is Senior Provenance Specialist, Department of Painting & Sculpture, The Museum of Modern Art, New York.

NEPIP was created in the early 2000s when museum websites weren't what they are today. Today, most American museums have pages dedicated to Nazi-Era provenance research. Usually, the entry page has background information, followed by pages listing the objects. MoMA's page **(FIG. 2)** currently lists roughly 1,400 works, including sculptures and prints, in MoMA's collection whose provenance information is online.

Clicking on one of these art objects reveals the actual provenance information. I will focus on Chaïm Soutine's *Dead Fowl,* dated circa 1924 **(FIG. 3)**. This painting has also been listed on the NEPIP portal. The provenance in **FIGURE 4B** is the provenance as posted in the early 2000s.

As the last line of MoMA's provenance indicates, the painting was given to MoMA by Mr. and Mrs. Justin K. Thannhauser in 1958. In New York, Thannhauser could be called a household name due to the major gift of masterpieces by artists such as Manet, van Gogh and Picasso that the family gave to the Solomon R. Guggenheim Foundation. Justin and Kate Thannhauser came from an important art dealing family that was originally based in Germany. In 1913, the Moderne Galerie Thannhauser in Munich mounted the first Picasso retrospective.

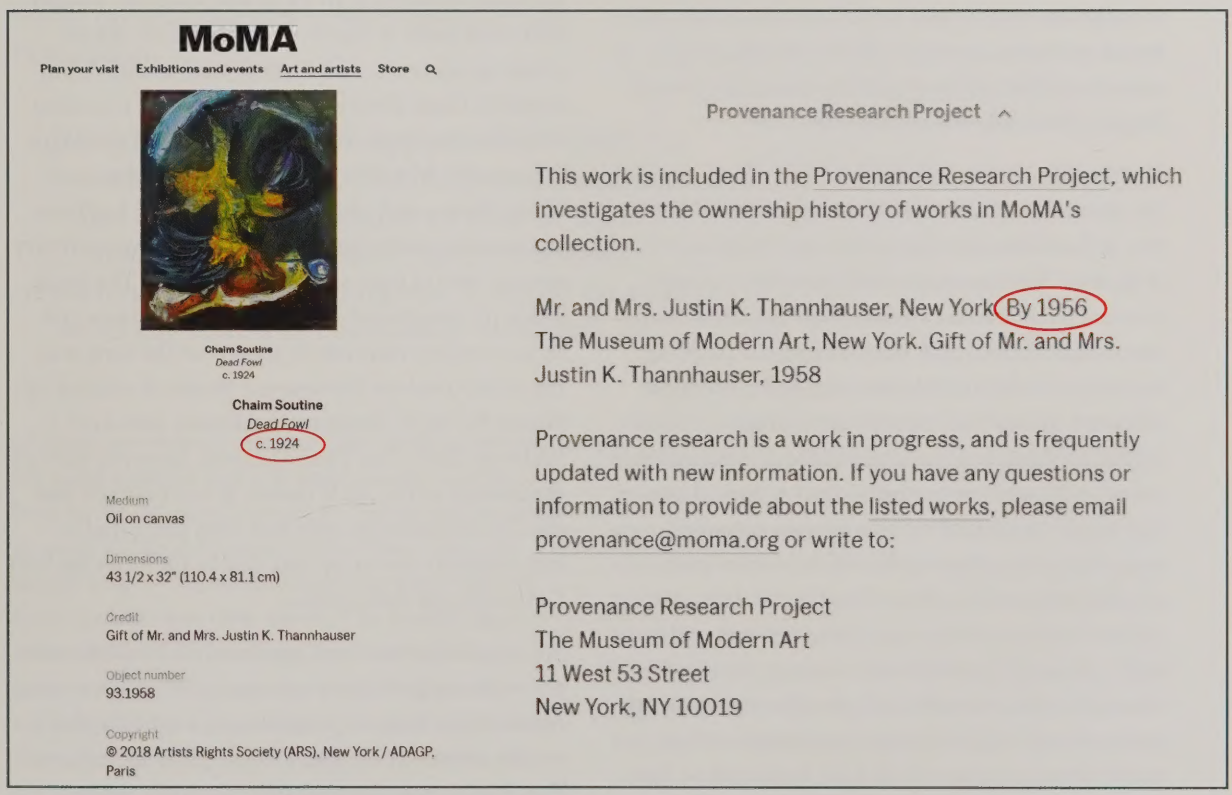
FIGURE 2. A page from MoMA's online Provenance Research Project.

Also, the gallery's exhibition on Matisse in Berlin in 1930 is considered to be the most comprehensive Matisse show in Germany to that date. Justin and Kate Thannhauser fled to escape the Nazi regime, first from Germany to Paris in 1937, and then to New York in 1940.

This Soutine painting was only known to have belonged to the Thannhausers in the U.S. after the war, by 1956, as the first line shows. That means that the painting, created circa 1924, had a provenance gap of more or less thirty-two years, and, because it is a French work, it was in Europe at some point.

As already noted, the provenance was compiled in the early 2000s, mainly by using internally available resources. Often, the backs of paintings bear provenance marks, but, in this case, the stretcher had been removed by the conservation department of MoMA, so the painting itself didn't have much to

FIGURE 3. Chaïm Soutine. ***Dead Fowl,*** c. 1924. Oil on canvas, 43½" x 32". Museum of Modern Art, NY. Gift of Mr. and Mrs. Justin K. Thannhauser. © 2019 Artists Rights Society (ARS), New York.



MoMA

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Chaim Soutine
Dead Fowl
c. 1924

Chaim Soutine
Dead Fowl
c. 1924

Medium
Oil on canvas

Dimensions
43 1/2 x 32" (110.4 x 81.1 cm)

Credit
Gift of Mr. and Mrs. Justin K. Thannhauser

Object number
93.1958

Copyright
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Provenance Research Project

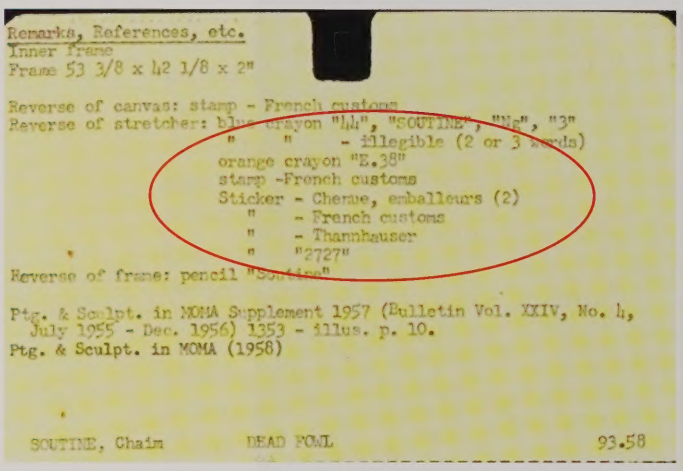
This work is included in the Provenance Research Project, which investigates the ownership history of works in MoMA's collection.

Mr. and Mrs. Justin K. Thannhauser, New York; By 1956
The Museum of Modern Art, New York. Gift of Mr. and Mrs. Justin K. Thannhauser, 1958

Provenance research is a work in progress, and is frequently updated with new information. If you have any questions or information to provide about the listed works, please email provenance@moma.org or write to:

Provenance Research Project
The Museum of Modern Art
11 West 53 Street
New York, NY 10019

FIGURE 4A and **B. A (left)** MoMA's website entry for Chaïm Soutine's ***Dead Fowl*** and **B)** its provenance as posted in the early 2000s.

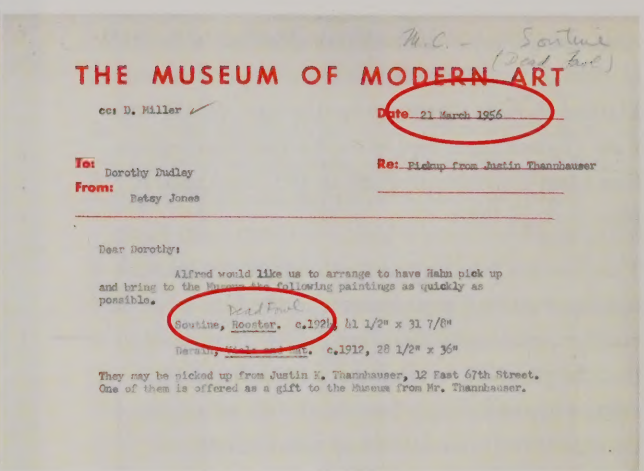


Remarks, References, etc.
Inner Frame
Frame 53 3/8 x 42 1/8 x 2"

Reverse of canvas: stamp - French customs
Reverse of stretcher: blue crayon "44", "SOUTINE", "46", "3"
" " - illegible (2 or 3 words)
orange crayon "E.38"
stamp -French customs
Sticker - Chenue, emballeurs (2)
" - French customs
" - Thannhauser
" "2727"
Reverse of frame: pencil "Soutine"

Ptg. & Sculpt. in MOMA Supplement 1957 (Bulletin Vol. XXIV, No. 4, July 1955 - Dec. 1956) 1353 - illus. p. 10.
Ptg. & Sculpt. in MOMA (1958)

SOUTINE, Chaim DEAD FOWL 93.58



M.C. - Soutine (Dead fowl)

THE MUSEUM OF MODERN ART

cc: D. Miller

Date 21 March 1956

To: Dorothy Dudley
From: Betsy Jones

Re: Pickup from Justin Thannhauser

Dear Dorothy:

Alfred would like us to arrange to have Hahn pick up and bring to the Museum the following paintings as quickly as possible.

Dead Fowl
Soutine, Rooster. c.1928 41 1/2" x 31 7/8"
Derain, Nude and Cat. c.1912, 28 1/2" x 36"

They may be picked up from Justin K. Thannhauser, 12 East 67th Street. One of them is offered as a gift to the Museum from Mr. Thannhauser.

FIGURE 5A and **B. A (left)** Registrar card for Chaïm Soutine's *Dead Fowl;* **B)** Documentation from March 1956.

offer. The Registrar card, however, **(FIG. 5A)** created at the time the painting had entered the museum collection, noted a few inscribed numbers and stickers such as "French Customs," "Thannhauser" and one of the Paris shipping company "Chenue." All together, these notes of provenance marks once found on the back of the painting didn't reveal more than Thannhauser and the painting's French origin, which was already known.

Another thing that was done at the time to compile the provenance information for the website entry was to look through the museum correspondence **(FIG. 5B).** The documentation revealed not only that the painting was already with the Thannhausers in March 1956, two years before the painting was acquired by MoMA, but also had a different title; not *Dead Fowl,* but the more precise, *Rooster.* Although there was quite extensive correspondence between Thannhauser and MoMA within those two years – the painting was first an extended loan, then a fractional gift – there was no provenance information given. Usually, MoMA sends out an artist questionnaire, if the artist is still alive, asking for information, such as, by whom the object was first sold and also the names of the previous collections. Soutine had died in 1943, so the questionnaire would have been sent to the Thannhausers as the last owners, but there is no evidence of that in this particular case. It is unclear whether the artist questionnaire was never sent or never returned.

Additionally, the available catalogue raisonné for Soutine in MoMA's library at the time, authored by Pierre Courthion in 1972, was checked. Twenty-two dead fowls in the form of pheasants, ducks, chickens, roosters, and turkeys were counted, but MoMA's *Dead Fowl* was not included. It is unclear why the later, more comprehensive, 1993 catalogue raisonné by Maurice Tuchman, Esti Dunow and Klaus Perls wasn't checked, but even if it had been, the need to verify the information through primary sources would have remained the same. The main guide to the whereabouts of primary sources and to provenance research in general at the time was the *AAM Guide to Provenance Research* written by Nancy H. Yeide, Konstantin Akinsha and Amy L. Walsh in 2001. The Thannhausers, however, weren't mentioned in the *AAM Guide.* It was believed that the Thannhauser records had been destroyed or lost, which is not surprising due to their fleeing first Germany and then France.

So, originally, this work appeared on MoMA's website with a gap of thirty-two years. But provenance research is a work in progress – as explicitly stated on the website **(FIG. 4B).** I would go as far as to say that it is constantly outdated. Even over the last ten years, the interpretation, methodology, level of

professionalism, climate, and, of course, the resources have changed so much that the field of provenance research is constantly shifting.

In the case of the Soutine, it turned out that when Justin Thannhauser's second wife, Hilde, died in Switzerland, some files of the gallery remained with her. These documents were given to the ZADIK, the archive of German and International Art Market Research in Cologne and are now accessible to researchers. It was obvious for us to go there and see if we could find more information on paintings that were or might have been with Thannhauser.

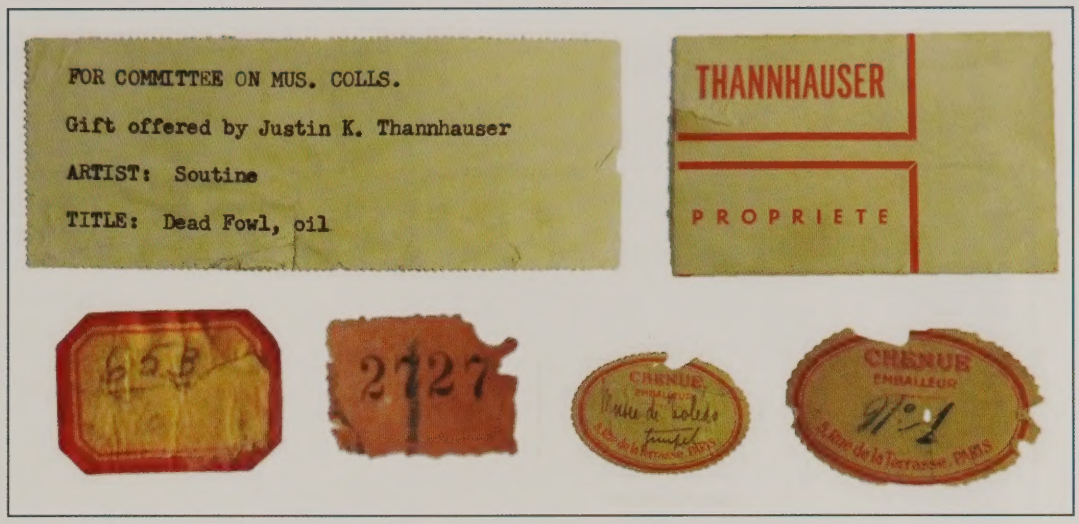


FIGURE 6A-F. (C-F bottom line) Images from MoMA's conservation files on Chaïm Soutine's *Dead Fowl.*

> "Originally, this work appeared on MoMA's website with a gap of thirty-two years. But on the website, and on that of other museums too, it says that provenance research is a work in progress. I would go as far as to say that it is constantly outdated. …"

Often in provenance research, one needs to revisit the same material and it is always important to go back to the primary sources. In this particular case, we went to MoMA's conservation files, where, it turned out, we found the labels that were removed from the stretcher **(FIG. 6A-F).** The MoMA label **(FIG. 6A)** doesn't reveal any new insights. The label that says "Thannhauser Propriété" could, according to the Guggenheim's research, mean that Thannhauser had this painting in France. On the bottom line, the little red label **(FIG. 6C)** might reveal that it had been with the dealer Étienne Bignou. The second one, "2727" **(FIG. 6D),** might be an Ambroise Vollard label. The third one, of the shipping company Chenue, says in pencil both "Musée de Toledo" and "Gimpel," which might refer to René Gimpel, a French art dealer who was active in the 1920s and 30s and who also fled. He was working for the Resistance and died in a concentration camp near Hamburg in 1945. His sons survived World War II and started Gimpel & Sons in London.

With this information in hand, but with no dates or stock number, for example, I started searching through the Thannhauser records, which are now processed, digitized and to some extent available on ZADIK's website **(FIG. 7A).** Because of funding from the German Lost Art Foundation, the digitized files have also been edited, which allows searching for specific names such as Chaïm Soutine **(FIG. 7B).** By this convenient way of searching, I was able to identify various folders that might relate to that particular painting by Soutine—or not. Legal restrictions, however, prevent the ZADIK from giving full digital access to the documents themselves. Before visiting the archives, however, I didn't want to rely solely on the search results, as it is hard to tell from the outside to what level of detail and interpretation the documents were processed and edited by

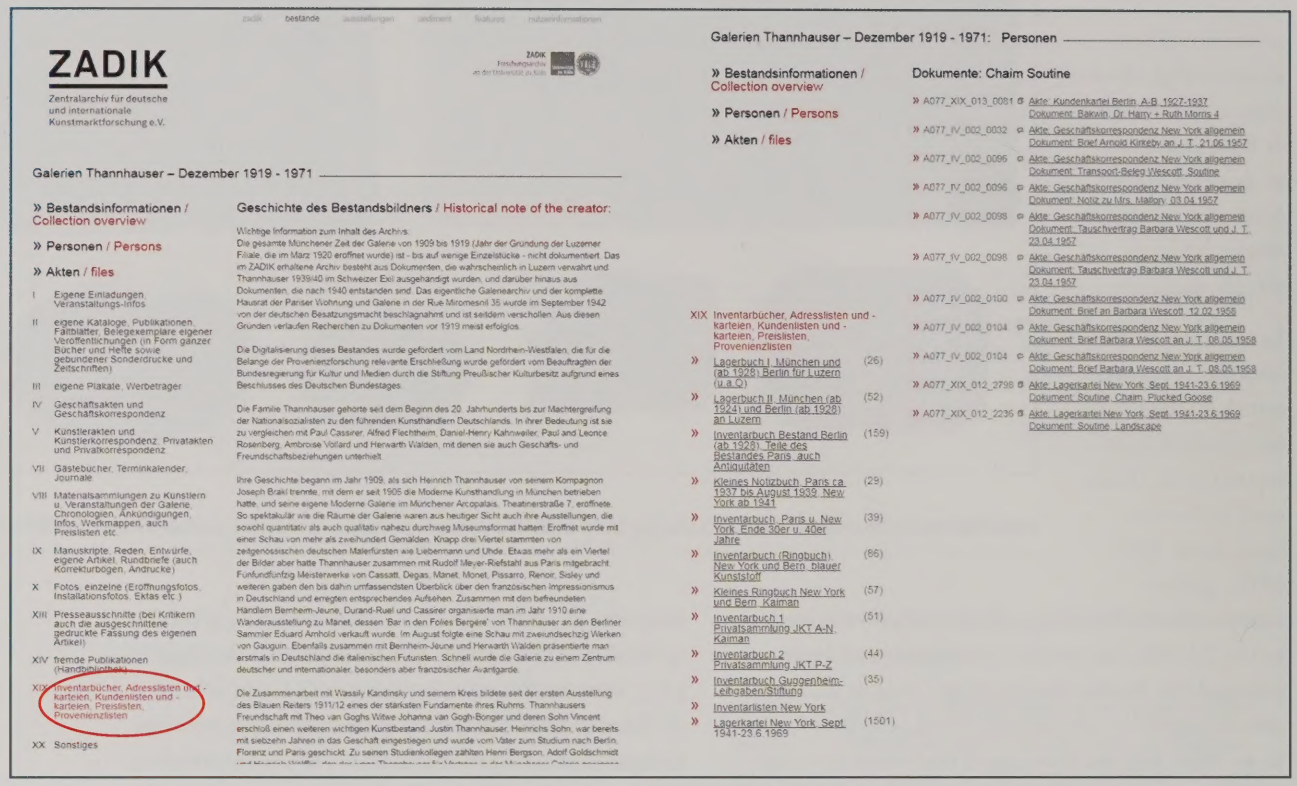

ZADIK
Zentralarchiv für deutsche und internationale Kunstmarktforschung e.V.
Galerien Thannhauser – Dezember 1919 - 1971
» Bestandsinformationen / Collection overview
» Personen / Persons
» Akten / files
Geschichte des Bestandsbildners / Historical note of the creator:
Galerien Thannhauser – Dezember 1919 - 1971: Personen
» Bestandsinformationen / Collection overview
» Personen / Persons
» Akten / files
Dokumente: Chaim Soutine

FIGURE 7A and **B. A (left)** ZADIK's Thannhauser Gallery records; **B (right)** Thannhauser record folders with possible information on Chaïm Soutine.

the archivists. From my experience, it is not sufficient to search digitally for names and key words through primary sources, but to understand the structure of the archival records and look systematically. Here, the inventory books, the stock books, and the notebooks seemed especially promising. In fact, it was only during my visit to the archives that it turned out that one page of the art dealer's notebook mentioned Soutine's *Dead Fowl* **(FIG. 8).** Recorded under Rooster, the title that Thannhauser used in his later negotiations with MoMA, the notebook entry also brought up "Gimpel" and "Toledo" again, as the labels had already revealed, only the latter seemed to come with dates "1930-54" this time. New information could also be found. It said, "Coll. I.M. Stettenheim (see above cat. P.267)," which seemed to refer to the "Cat. of Eur. Paintgs." So, as painstaking as provenance research can be, finding a page like this within vast amounts of documents is extremely exciting.

Before I was even able to start trying to put these puzzle pieces together, we received an email at provenance@moma.org from Diana Kostyrko, an Australian-based provenance researcher and scholar. Diana Kostyrko had just recently published her book *The Journal of a Transatlantic Art Dealer: René Gimpel (1918-1939),* an edited version of Gimpel's personal diary that was posthumously published in 1963. It was Diana Kostyrko who pointed out that, in January 1930, René Gimpel became the "living masters" advisor for the Toledo Museum of Art in Ohio. Looking at the diary, I saw that he wrote on May 12, 1930, "My friend Stettenheim of New York has given me the money for a turkey [sic] by Soutine. I've not seen a more beautiful one (40,000 francs)." Moreover, the 1939 publication of the Toledo Museum of Art *Catalogue of European Paintings* **(FIG. 9)** revealed not only an illustration of the Soutine painting in question but also the credit line "Gift of I. M. Stettenheim," which Thannhauser had recorded in his notebook but had apparently mistaken for provenance information when he received the deaccessioned work

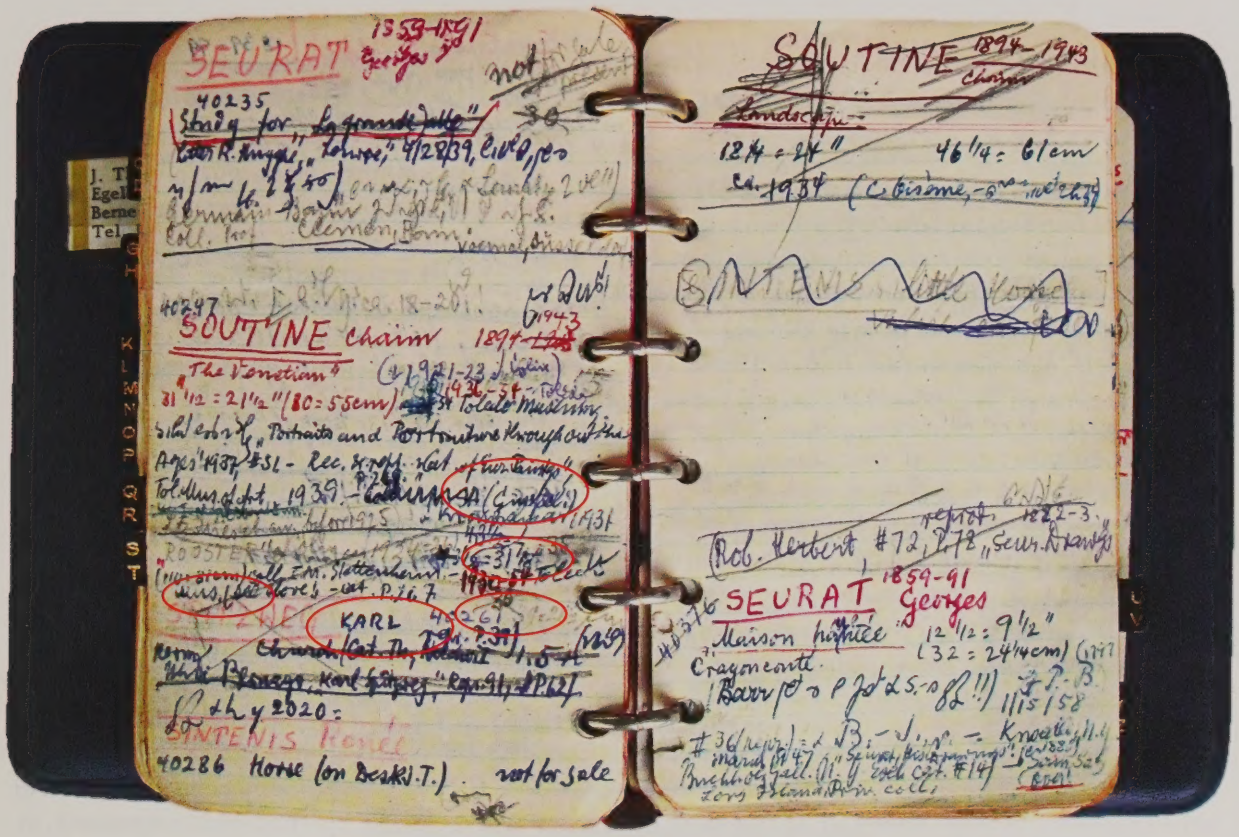
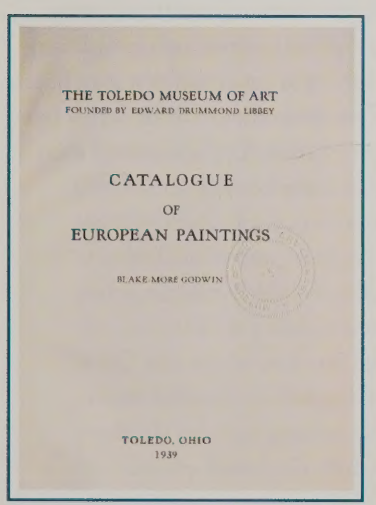


FIGURE 8. Pages from the Thannhauser Gallery notebook, ZADIK archive in Cologne, showing information on *Dead Fowl.* (ZADIK A077, XIX, 006, 0137)

from the museum in 1954. Taking all of these sources together, it turned out that the French dealer René Gimpel bought *Dead Fowl* in his advising function for the Toledo Museum of Art in Paris in 1930 with funds provided by I.M. Stettenheim of New York. It even turned out that in October 1926, the painting had been sold at auction at Hôtel Drouot in Paris and brought a record price for


THE TOLEDO MUSEUM OF ART
FOUNDED BY EDWARD DRUMMOND LIBBEY

CATALOGUE
OF
EUROPEAN PAINTINGS

BLAKE-MORE GODWIN

TOLEDO, OHIO
1939

CHAIM SOUTINE 1884-

POLISH, born in Vilna, he came to Paris in 1913. His training academic, his inclinations were Fauvist, Vorticist, perhaps only individualist. With the volubility of his race he pours out expression upon canvas, bending form into approach to abstraction, resolving raw color into flashing, sounding harmonics, erupting vivid, arresting compositions.

COLOR ARRANGEMENT

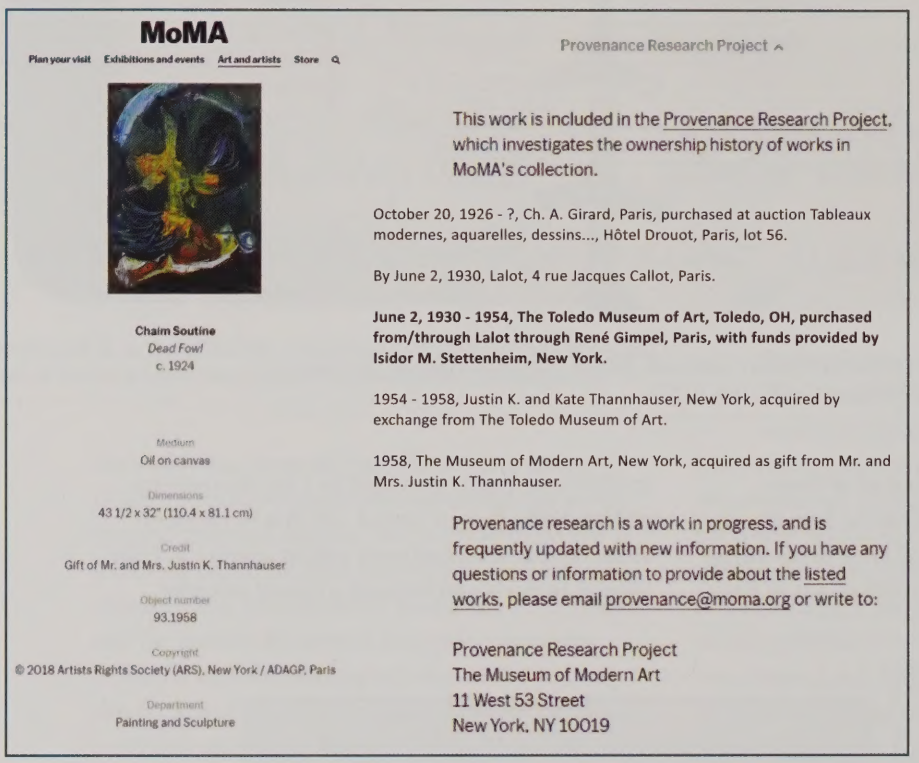
Dynamic swirls, broad strokes of closely related colors, accented by accurate complements—blues dominant, greens, yellows, oranges subordinate—attain fine balance in a composition surcharged with motion. Semblance of form is subjected to rhythmic pattern of color and texture.

Oil on canvas, 31⅞ x 43½ in. (81 x 110 cm.) Signed in lower right corner: Soutine.
Gift of I. M. Stettenheim, 1930.

FIGURE 9A and **B.** Inside cover page and catalogue entry page from the Toledo Museum of Art's 1939 *Catalogue of European Paintings.*

Soutine at the time, according to Malcolm Gee's 1981 publication *Dealers, Critics, and Collectors of Modern Painting.*

To conclude, the Soutine painting that basically came into MoMA's collection with no provenance and had, for sixty years, no provenance in MoMA's records except the donor's pedigree, turned out to have brought a record price in 1926 and was then bought, published and deaccessioned by an American museum. We updated our records and website **(FIG. 10).**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Provenance Research Project
This work is included in the Provenance Research Project, which investigates the ownership history of works in MoMA's collection.
October 20, 1926 - ?, Ch. A. Girard, Paris, purchased at auction Tableaux modernes, aquarelles, dessins..., Hôtel Drouot, Paris, lot 56.
By June 2, 1930, Lalot, 4 rue Jacques Callot, Paris.
June 2, 1930 - 1954, The Toledo Museum of Art, Toledo, OH, purchased from/through Lalot through René Gimpel, Paris, with funds provided by Isidor M. Stettenheim, New York.
1954 - 1958, Justin K. and Kate Thannhauser, New York, acquired by exchange from The Toledo Museum of Art.
1958, The Museum of Modern Art, New York, acquired as gift from Mr. and Mrs. Justin K. Thannhauser.
Provenance research is a work in progress, and is frequently updated with new information. If you have any questions or information to provide about the listed works, please email provenance@moma.org or write to:
Provenance Research Project
The Museum of Modern Art
11 West 53 Street
New York, NY 10019
Chaim Soutine
Dead Fowl
c. 1924
Medium
Oil on canvas
Dimensions
43 1/2 x 32" (110.4 x 81.1 cm)
Credit
Gift of Mr. and Mrs. Justin K. Thannhauser
Object number
93.1958
Copyright
© 2018 Artists Rights Society (ARS), New York / ADAGP, Paris
Department
Painting and Sculpture

FIGURE 10. MoMA's updated, current website entry for Soutine's *Dead Fowl.*

Provenance research is constantly outdated. It evolves depending on what resources become available. It is research intensive. It is also laborious, painstaking, and tedious due to the mess of documentation that a researcher has to go through in archives that are located around the world. And, it is crowd-sourced. Researchers depend on the information of the art market, on information from claimants, and vice versa. We depend on specialized scholars, who point us in the right direction.

In that regard, I want to close with a personal note. I had no part in the 1998 Washington Principles. In a way, I am an offspring of it now as a researcher at MoMA. When I studied art history in Germany between 2001 and 2007, and I took courses in five cities, I never heard of Nazi-looted art or of provenance research, in particular, Nazi-Era provenance research. That is why I think that the recent Berlin Conference makes me hopeful. I think that today, there's no student, especially at German institutions where professorships are being established, who can actually study art history without encountering Nazi-Era provenance research. So, I thank my three fellow panelists for their efforts starting in 1998.

• • •

THEN AND NOW: THE 20TH ANNIVERSARY OF THE WASHINGTON CONFERENCE ON HOLOCAUST-ERA ASSETS

Q&A

Dr. Sharon Flescher (SF): Thank you all for these wonderful talks. The provenance discussion underscored how time-consuming and detail-oriented provenance research is, and that it requires both luck and bloodhound-like research skills. Not all provenance researchers are equal. Lynn is particularly good at it.

We don't have much time for questions, unfortunately, as Ambassador Eizenstat has to return to Washington. I will start.

Q The words "just and fair solution" appear in the Washington Principles and came up in your talks. What is a just and fair solution, given that not all claims are equal and not every claimant has the kind of material necessary to prove the claim, even if it is valid? How do you define a "just and fair solution"?

A **Amb. Stuart Eizenstat (SE):** I will answer, as I wrote the phrase. On December 3, 1998, at 7 o'clock in the morning, which was the last day of the Washington Conference, we had no agreement at all. The only way that I could get the forty-four countries to agree was to insert what we call in diplomatic terms a "chapeau," introductory language which says, "In developing a consensus on non-binding principles to assist in resolving issues relating to Nazi-confiscated art, the Conference recognizes that among participating nations there are differing legal systems and that countries act within the context of their own laws." But, as the just and fair solutions applied to private collections and public collections, we purposefully left that general. It's not defined except in a case-by-case basis. But, it means that an effort should be made to identify, to post, and then to restitute or compensate wherever possible. Sometimes a just and fair solution may mean splitting the proceeds of a sale, where a good-faith purchaser possesses the work. … Sometimes the split, depending on the evidence, might be 80/20. Sometimes it can be 50/50. We wanted to leave that as general as possible.

Having said that, it's very important, and others have raised this, that the U.S. initiated this whole process to be the leaders. And, yet, although it's true that the European countries haven't done as much as they should with provenance research, they have established commissions that make decisions. The U.K.'s Advisory Spoliation Panel is terrific, as is the one in Austria. We don't have one. I tried for years. The State Department, the government, didn't want to pay for it. Admittedly, everything in the U.S. is private. A professor at Harvard Law School, Bob Mnookin, was willing to host it. I went to the Mediation Association and to the American Arbitration Association. They were willing to donate people who would serve. If there's a will, there's a way, because we have got to get this out of the court system. It is terrible. It's not only that it lasts a decade, but how is it possible that a judge can say that the Washington Principles aren't part of U.S. Policy? It's in black and white. We've said it again and again; at the Vilnius Conference (2000); we said it at Terezin (2009); and again in Berlin (2018). I'm saying it again now. It *is* U.S. policy, and so, I think we need to try to find some way of getting these claims out of the hands of judges, who go through interminable hearings, and get it into a non-litigation focus. Almost sixty cases,

and I think Larry had the same figure, have been resolved by American museums, not as part of the Christie's and Sotheby's cases, but by themselves. They've done it by creating just and fair solutions. Sometimes it's giving the art back. Sometimes it's splitting the proceeds. We wanted to leave that flexibility. I hope the JUST Act (2018) and the HEAR Act (2016) will now encourage American museums not to go to court, as they have been deprived of their key defense, which was the statute of limitations. I hope that it will encourage museums and claimants to sit down and mediate the claim. If we can't get a formal, government-approved mediation, Harvard has a mediation service. There are many that will do it.

Q **SF:** Does anyone else want to quickly tackle the question of just and fair solutions?

A **Monica Dugot (MD):** A just and fair solution is very fact specific when you look at each case. The facts determine what you can end up with, depending upon the claimant and the consignor. From where I sit at Christie's, restitution issues comprise not only legal issues, there is also a commercial and moral component. Litigation is not the way to resolve these cases.

Even if a case is resolved on a legal basis, a procedural basis, it doesn't necessarily remove the taint on the work. The work won't achieve the value that it can. So, we have concerns about selling it. All this is to say that "just and fair" solutions are fact specific.

SE: I want to say again that "just and fair solutions" doesn't mean that when a museum loves its collection, you can see it when, for example, you go to Amsterdam. That's not what a "just and fair solution" is when there's a legitimate owner or heir from whom it was stolen.

Lawrence M. Kaye (LK): In the U.S. our museums haven't adopted that as a policy. The problem is that all the provenance in the world – and it's hard, and a lot of it is recent – but, when it comes to claims, the museum has to follow through with the claim. I understand that often it's difficult to sort seventy years or more of history; perhaps even how the work got to where it was in the Holocaust Era. But, more often than not, at some point you know when something was lost as a result of the Holocaust. The issue that we have to confront, and that I think has been confronted in Berlin and over time, whether you're private or public, is that once you do determine that the work was looted by the Nazis or lost due to duress or a forced sale as a direct result of Nazi prosecution, then shouldn't it just go back? That's the issue. I don't think we're very far away from agreeing on that as a principle, at least in the United States. I think that it's happening even more, to varying degrees, with the commissions in Europe.

> "We need to try to find some way of getting these claims out of the hands of the judges, who go through interminable hearings, and get it into a non-litigation focus."

SE: I want to add one other point: Art is only one piece. Under the Clinton Administration, in my various capacities as representative of the President, I negotiated $8 billion of recoveries: $1.25 billion from Swiss banks that were hiding resources for fifty years; $5 billion for slave enforced labor agreements within Germany; $800 million for Austria; French railways. All of these things. And, then, more recently, I put another hat on with the Claims Conference: $9 billion since 2009 with the German Finance Ministry for improved home care and pensions. Here it is that Germany and now Austria have come to terms with their past. They are taking the lead, and we're sitting in the U.S. going through these endless litigations, with judges saying, "Well, you know, that's not our policy." I mean, what kind of an example does that set? We have a responsibility ourselves. An informed citizenry in the United States really needs to rise up on this. Congress has acted twice, 2016 and 2018. They're getting the point. What I hope, Larry, Lynn, and Monica, is that we could have this panel in front of the new Congress.

MD = MONICA DUGOT
SE = STUART E. EIZENSTAT
SF = SHARON FLESCHER
LK = LAWRENCE M. KAYE
LR = LYNN ROTHER

Q SF: Well, you can suggest it. The whole Congress or just the Judiciary?

A SE: Just a Committee, whether it's the Banking Committee or the Judiciary Committee.

> "From where I sit at Christie's, restitution issues comprise not only legal issues, there is also a commercial and moral component. Litigation is not the way to resolve these cases."

Q SF: Stuart, in 2003, when you gave a talk for IFAR, you graded post-1998 Conference activity a C+ or B- and said, "It certainly doesn't rate an A." Would you still give it a C+ or a B-?

A SE: We have accomplished much more. I think that if you take it in its totality, I would call it a glass half-full; you'd have to say B to B+.

We have come a long way in the past twenty years and since that talk in 2003. We have all of these art panels; we have wartime collections that are being posted. We've got databases. In 2003, Monica had just barely started at Christie's. When did you start?

MD: 2004. But, Christie's was already dealing with restitution issues. I came to centralize it.

SE: But, as Monica mentioned, just in the last five or six years, forty artworks were handled. We've come a long way. One of the advantages of having international conferences, like the one in Berlin, is that it is an action-forcing device. So, what happened? The Dutch suddenly found 170 paintings. Before Berlin. Monika Grütters, as I mentioned earlier, decided she was going to end the practice where German museums could block the Limbach Commission from hearing a claim. In France, there's something called the CIVS,[1] which was created about ten years ago to deal with individual compensation for French Holocaust victims, nothing to do with art. As a result of the tendency of the Washington Conference, the French decided to put the CIVS in the Prime Minister's office and to mandate that it also cover looted art. The French Ambassador made a commitment that they're not going to do just the MNR collection, but they're going to start looking at their public collections. So, I think the November 2018 Berlin Conference was a catalyst for further action to implement the Washington Principles and the Terezin Declaration. The Czechs are going to have a conference in 2019 for the tenth anniversary of the Terezin Declaration. So, things are moving, slower than we like, but, there is no doubt that we are making progress.

SF: I'm afraid we have reached our time limit. Please join me in thanking our wonderful speakers. Feel free to ask additional questions at the reception.

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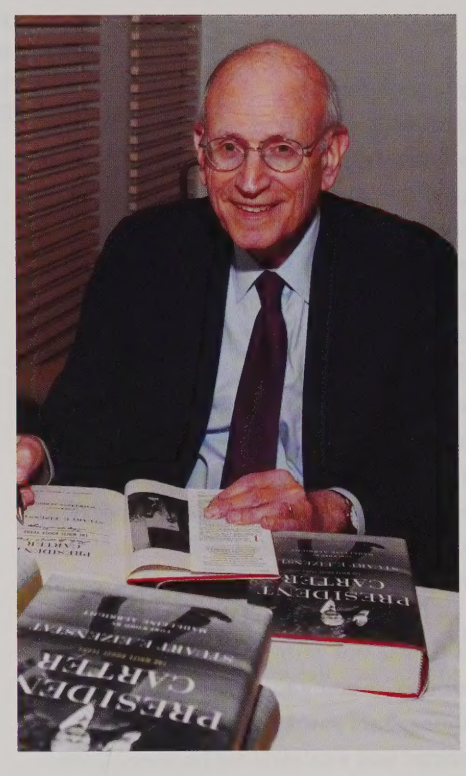
[1] CIVS - Commission pour l'indemnisation des victimes de spoliations (Commission for the Compensation of victims of spoliations).

• • •

SCENES FROM AN IFAR EVENING



Stuart Eizenstat signing copies of his new book.

Stephen Lash (left) and Howard Spiegler.

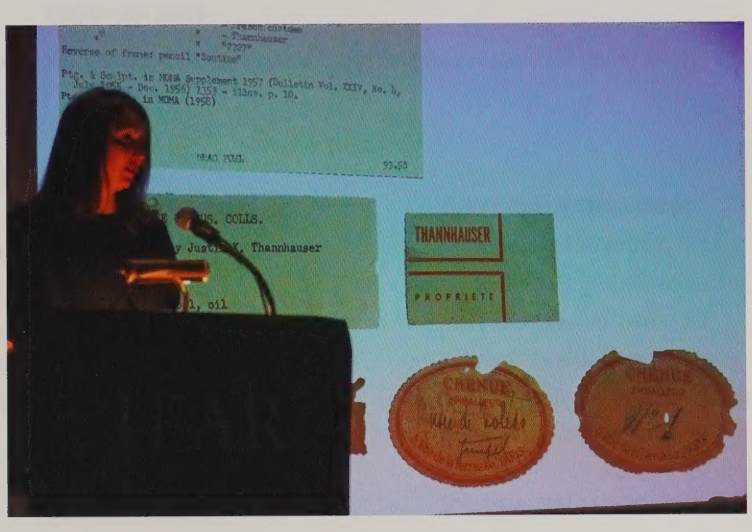
Steven Schindler and Mary Buschman.

Left to right: Elisabeth Clark, Marianne Rosenberg and George Clark.

Left to right: Albert Montano, Lawrence M. Kaye, Mie Oshima, and Richard Landau.

Carmen Dubruc and Lew Haber.

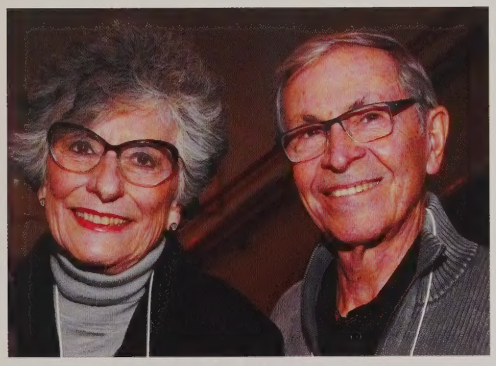
Credit for these photos and all other images and guests at this program: Steven Tucker.



Lynn Rother showing archival provenance materials.

André Bondi and Monica Dugot.

Left to right: Sharon Cott, Christel Force and Rebecca Noonan Murray.



Arlene and Arthur Elkind.

Marei (left) and Charlene von Saher.

Left to right: Marc Masurovsky, Todd Linden and Joan Kaye.

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STOLEN ART

PAINTINGS

237. **LUDOLF BACKHUYZEN** (School of) (Dutch, 1631-1708). ***Repairing a Ship.*** Oil on canvas. 66.5 x 77 cm (approx. 26 ⅛″ x 30 ¼″). *L19.1. Stolen in Wassenaar, The Netherlands on April 13, 2017. Interpol no. 2017/151991.

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238. **FERNANDO BOTERO** (Colombian, born 1932). ***Rape of Europa,*** 2009. See color photo on inside back cover.

239. **EUGÈNE LOUIS BOUDIN** (French, 1824-1898). ***Figures on a Beach***. Oil on canvas. 17 x 22.5 cm (approx. 6 ¾″ x 8 ¾″). Signed l/r with initials. *L19.1. Stolen from an auction house in Versailles, France on October 11, 2018. Interpol no. 2018/47097. See item 285 below.

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240. **MARC CHAGALL** (Russian/French, 1887-1985). ***Douceurs/les fiancés au bouquet,*** 1965. Oil on panel. 28.91 x 20.96 cm (11 ⅜″ x 8 ¼″). Signed l/l. *L18.2091. Stolen from a private residence in Scarsdale, NY on May 1, 2017.

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241. **BRUNIO D'ARCEVIA** (Italian, born 1946). ***Miracle of Fire,*** 2000. Oil on canvas. 121.92 x 152.4 cm (48″ x 60″). *L18.2244. Stolen from a storage facility in Malibu, CA on March 18, 2018.

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242. **JAN FYT** (Flemish, 1611-1661). ***Two Dogs and Fruit.*** Oil on panel. 36 x 46.5 cm (approx. 14 ⅛″ x 18 ¼″). *L19.1. Stolen from a museum in Poznan, Poland between 1939 and 1945. Interpol no. 2017/288105.

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243. **KARL HOFER** (German, 1878-1955). ***Young Wild,*** 1937. Oil painting. 132 x 84 cm (approx. 52″ x 33″). Monogrammed and dated l/r: CH37. *L18.2190. Stolen from a private residence in Frankfurt am Main, Germany on November 21, 2018.

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244. **A.Y. JACKSON** (Canadian, 1882-1974). ***Sun Gleams: Autumn, North Saskatchewan.*** Oil on canvas. 81.28 x 101.6 cm (32″ x 40″). *L19.201. Stolen from a private residence in Toronto, Canada on 1/18/19.

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Numbering for the Volume 19 Cumulative Index of Stolen Art began with Vol. 19, nos. 1&2.

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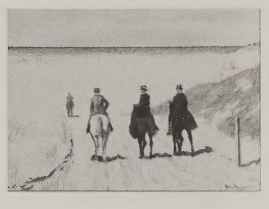

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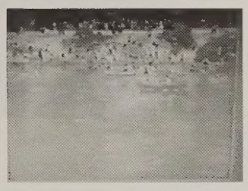

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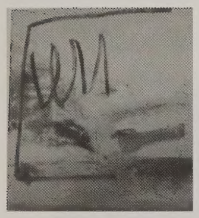

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253

245. **PAUL MEZEI** (Hungarian, contemporary). ***Towards to (Green night horse),*** 2010. Oil, brush hair and mixed media on fiberboard. 35.05 x 26.92 cm (approx. 13 ¾″ x 10 ½″). *L18.2206. Stolen in transit in Venezuela on January 18, 2018.

246. **MICHELANGELO (Buonarroti) (Follower of)** (Italian, 16th century). ***The Silence of Our Lady,*** 1550-1570. Oil on panel. 145 x 99 cm (approx. 57″ x 39″). *L19.108. Stolen from a church in Zele, Belgium on January 11, 2019.

247. **JOHN MYATT** (English, born 1945). ***Morning Ride on the Beach,*** 2005. (In the style of Anton Mauve.) Mixed media painting on canvas. 61 x 91.4 cm (24″ x 36″). Purchased from a gallery after its exhibition of John Myatt forgeries. *L18.2117. Stolen from a private residence in Macclesfield, England on December 20, 2010.

248. **MARGARET NAKHLA** (Egyptian, 1908-1977). ***Baignade à Charentonneau (La Marne),*** 1939. Oil on canvas. 83.82 x 111.76 cm (33″ x 44″). *L18.2257. Stolen from a storage facility in Washington, DC on August 15, 1989.

249. **ANN PIBAL** (American, born 1969). ***CBLT,*** 2018. See color photo on inside back cover.

250. **GERARD PORTIELJE** (Belgian, 1856-1929). ***The Hunter's Story.*** Oil on canvas. 54 x 71 cm (approx. 21 ¼″ x 28″). Signed l/r. *L19.1. Stolen from a private residence in Brussels Belgium on August 24, 2018.

251. **ROLAND SCHALAMBERIDZE** (Russian, born 1958). ***Untitled/Yellow Abstract,*** 1992. Oil on canvas. 142.24 x 158.75 cm (56" x 62 ½"). *L18.1964. Stolen in transit between The Hamptons and New York City on September 1, 1994

252. **CARL SPITZWEG** (German, 1808-1885). ***Ruine am Meer.*** Oil painting. 11 x 13.51 cm (approx. 4 ¼" x 5 ¼"). Certification by the Spitzweg family is attached to the back of the painting. *L18.2302. Stolen from a private residence in Munich, Germany on November 22, 2018.

253. **Unknown Artist** (18th century). ***Portrait of an Unknown Gentleman.*** Oil on panel. 27 x 21.41 cm (approx. 10 ⅝″ x 8 ⅜″). *L18.2202. Stolen from Oberhofen Castle in Oberhofen am Thunersee, Switzerland on August 17, 1979.

STOLEN ART

254. **VICTOR VASARELY** (French-Hungarian, 1906-1997). ***Axo,*** 1974. See color photo on inside back cover.

The following four paintings were stolen from a private residence in Alkmaar, The Netherlands on August 26, 2017. *L19.1:

255. **JOHANNES JACOBUS DOESER** (Dutch, 1884-1970). ***Blaricum Moor.*** Oil on canvas. 87.5 x 102.5 cm (approx. 34 ½″ x 40 ¼″). Signed l/r.

256. **GUILLAUME GUSTAVE ANTOINE EBERHARD** (Dutch, 1879-1949). ***Christmas Stall in Slavante Saint Pieter in Maastricht.*** Oil on canvas. 60 x 50 cm (approx. 23 ½″ x 19 ¾″). Signed l/l.

257. **GUILLAUME GUSTAVE ANTOINE EBERHARD** (Dutch, 1879-1949). ***Landscape with Dunes.*** Oil on canvas. 25 x 40 cm (approx. 9 ¾″ x 15 ¾″). Signed l/l.

258. **Unknown Artist.** ***Factory Beside the River Maas in Maastricht.*** Oil on canvas. 50 x 40 cm (approx. 9 ¾″ x 15 ¾″). Signed l/l.

The following four paintings by **CAZIEL** (Polish, 1906-1988) were stolen from a gallery in London, England on April 20, 2018. *L18.1955:

259. ***Abstract,*** 1965. Oil on canvas. 61 x 51 m (approx. 24" x 20").

260. ***Abstract,*** 1965. Oil on canvas. 55 x46 cm (approx. 21 ½″ x 18 ⅛″).

261. ***Abstract,*** 1967. Oil on canvas. 61 x 46 c (approx. 24″ x 18 ⅛″).

262. ***Abstract,*** 1967. Oil on canvas. 61 x 46 cm (approx. 24″ x 18 ⅛″).

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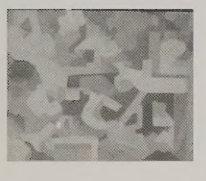

269

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273

The following five paintings were stolen in Düsseldorf, Germany on January 1, 2016. *L18.2002:

263. **KAREL ČERNÝ** (Czech, 1892-1965). ***With the Fruit Woman.*** Oil on canvas. 40 x 60 cm (15 ¾″ x 23 ½″). Signed l/r.

264. **JOSEF CIMA** (Czech, 1891-1901). ***Krajina,*** 1935. Oil on canvas. 60 x 81 cm (approx. 23 ½″ x 31 ⅞″).

265. **EMIL FILLA** (Czech, 1882-1953). ***Still Life with Grapes,*** 1915. Oil on canvas. 41 x 33 cm (approx. 16 ⅛″ x 13″). Signed and dated l/l.

266. **EMIL FILLA**. ***Still Life with White Head.*** Oil on canvas. 65 x 81 cm (approx. 25 ½″ x 31 ⅞″). Signed l/l.

267. **EMIL FILLA**. ***Woman with Hat,*** 1948. Oil on canvas. 47 x 39 cm (18 ½″ x 15 ¼″).

The following three paintings by **MARTIN FROY** (English, 1926-2017) were stolen from a private residence in London, England on September 13, 2017. *L18.2238:

268. ***Ascension.*** Acrylic on canvas. 76 x 61.01 cm (approx. 30″ x 24″).

269. ***Sabbatical Series 24 30,*** ca. 1971-73. Acrylic on board. 61 x 76 cm (approx. 24″ x 30″).

270. ***White Relief,*** 1973. See color photo on inside back cover.

The following three paintings by **MAXFIELD PARRISH** (American, 1870-1966) were stolen from a private residence in Auburn, New Hampshire on September 17, 2018. *L19.62:

271. ***Ecstasy,*** ca. 1920. See color photo on inside back cover.

272. ***Ecstasy Adaptation,*** ca. 1920. Oil on canvas. 17.78 x 12.7 cm (7″ x 5″).

273. ***Morning,*** ca. 1920. Oil on canvas. 17.78 x 12.7 cm (7″ x 5″).

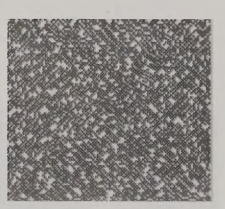
STOLEN ART

The following three paintings by **LI ZHENWEI** (Chinese, contemporary) were stolen in Los Angeles, CA on August 30, 2016. *L19.157:

274. ***Non Existent No. 29,*** 2015. Oil on canvas. 3 9.5 x 39.5 cm (approx. 15 ½″ x 15 ½″).

275. ***Non Existent No. 30,*** 2015. Oil on canvas. 39.5 x 39.5 cm (approx. 15 ½″ x 15 ½″).

276. ***Non Existent No. 38,*** 2016. Oil on canvas. 39.5 x 39.5 cm (approx. 15 ½″ x 15 ½″).



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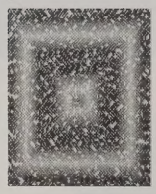

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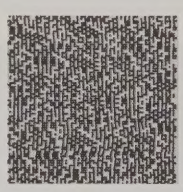


276

The following two paintings were stolen from a museum in Warsaw, Poland between 1939 and 1945. *L19.1. Interpol no. 2017/287589:

277. **GASPARD DUGHET (Gaspard Poussin)** (French, 1615-1675). ***Idyllic Landscape.*** Oil painting. 69 x 84.5 cm (approx. 27 ⅛″ x 33 ¼″).

278. **EGBERT VAN HEEMSKERCK** (Dutch, 1634-1704). ***Interior with Figures Playing Music and Singing.*** Oil on canvas. 28 x 39 cm (approx. 11″ x 15 ¼″).

277

278

The following five paintings were stolen from a private residence in Houston, TX on February 5, 2019. *L19.288. See also item 291 below:

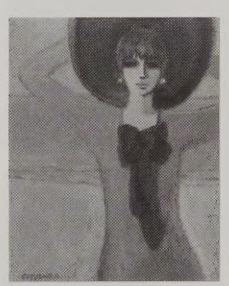
279. **PIERRE BONNARD** (French, 1867-1947). ***Young Woman in Black Hat,*** 1910. See color photo on inside back cover.

280. **JEAN-PIERRE CASSIGNEUL** (French, born 1935.) ***Woman in Green,*** 1960. Oil on canvas. 91.74 x 63.65 cm (approx. 36 ⅛" x 25").

281. **CHILDE HASSAM** (American, 1859-1935). ***California Hills in Spring,*** 1914. See color photo on inside back cover.

282. **FERNAND LÉGER** (French, 1881-1955). ***Landscape with Red Rooster,*** 1937. Oil on canvas. 65.4 x 91.44 cm (25 ¾″ x 36″). Signed and dated l/l: 37/F. Léger.

283. **CLAUDE MONET** (French, 1840-1926). ***The Plain of Gennevilliers,*** c. 1877. Oil on canvas. 48.41 x 60.96 cm (approx. 19″ x 24″). Signed l/r.



280

282

283

Miniatures

284

284. **JEAN-BAPTISTE PAULIN GUÉRIN** (French, 1783-1855). ***Portrait of a Woman.*** Oil on bone. 6.4 x 4.01 cm (approx. 2 ½″ x 1 ½″). *L19.1. Stolen from a museum in Warsaw, Poland between 1939 and 1945. Interpol no. 2017/287589.

Works on Paper

285

285. **EUGÈNE GALIEN-LALOUE** (French, 1854-1941). ***Paris, Place Pigalle.*** Gouache on paper. 17 x 30.5 cm (approx. 6 ¾″ x 12″). Signed l/l. *L19.1. Stolen from an auction house in Versailles, France on October 11, 2018. Interpol no. 2018/47097. See item 239 above.

286

286. **ANDY WARHOL** (American, 1928-1987). ***Ships,*** 1956. Ink. 58.42 x 31.75 cm (23″ x 12 ½″). Framed dimensions: 29″ x 18 ½″. *L19.205. Stolen from a gallery in London, England on January 25, 2019. See item 287 below.

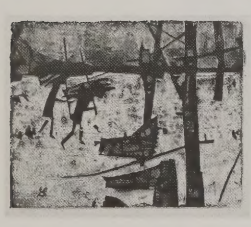
Prints, Lithographs, Etchings

287

287. **BANSKY** (English, born 1974). ***Golf Sale,*** 2003. Screenprint on paper. Framed dimensions: 19 ½″ x 25 ½″. Ed. no. 424/750. *L19.205. Stolen from a gallery in London, England on January 25, 2019. See item 286 above.

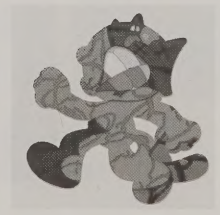
288

288. **ALBERT IRVIN** (English, 1922-2015). ***Cricketer's Monoprint,*** 2012. 55 x 55 cm (approx. 21 ⅝″ x 21 ⅝″). Ed. no. 1/1. *L18.2171. Stolen from a private residence in London, England on November 18, 2018.



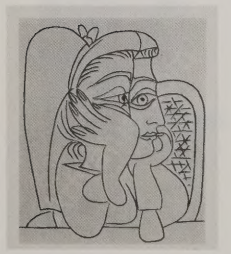
289

289. **HORST JANSSEN** (German, 1929-1995). ***Holzsammler (Wood Collector),*** 1957. Woodcut on paper. 30 x 38 cm (approx. 11 ¾″ x 15″). Signed l/r. Ed. no. 18/25. *L19.1. Stolen from a gallery in Hamburg, Germany on December 9, 2018.



290

290. **KAWS (BRIAN DONNELLY)** (American, born 1974). ***Ankle Bracelet,*** 2017. Screenprint on paper. 147.32 x 147.32 cm (58″ x 58″). *L18.2312. Stolen from a gallery in Torrance, CA on December 9, 2018.



291

291. **PABLO PICASSO** (Spanish, 1881-1973). ***Woman in Arms (Portrait of Jacqueline Leaning on Her Elbows),*** 1960. Linoleum cut print in ink on Arches paper. 74.93 x 61.98 cm (approx. 29 ½″ x 24 ½″). Ed. no. 16/50. *L19.288. Stolen from a private residence in Houston, TX on February 5, 2019. See items 279-283 above.

STOLEN ART

The following two works were stolen in New York, NY on December 21, 2018. *L19.97:

292. **JACQUES CALLOT** (French 1592-1635). ***The Fair at Impruneta*** (2d plate), 1622. Etching on paper. Plate: 66.2 x 41.2 cm (approx. 26″ x 16 ¼″).

292

293. **MAURICE DENIS** (French, 1870-1943). ***The reflection in the fountain,*** 1897. Lithograph on paper. 40.9 x 25.4 cm (approx. 16″ x 10″).

293

The following two prints by **TAKASHI MURAKAMI** (Japanese, born 1962) were stolen in in transit in New York, NY on November 13, 2018. *L19.116:

294. ***Kansei: The Golden Age,*** 2015. Screenprint on wove paper. 27 ¾″ x 27 ¾″. Ed. no. 107/300. Signed and numbered in metallic ink.

294

295. ***Moon over Ruined Castles,*** 2015. See color photo on inside back cover.

Sculpture

296. **NATHAN CHOATE** (American, 1899-1965). ***Bust of a Sudanese Woman,*** c. 1930. Marble. *L19.139. Stolen from a private residence in Cherry Hill, NJ in November 2018.

296

Tapestries, Textiles

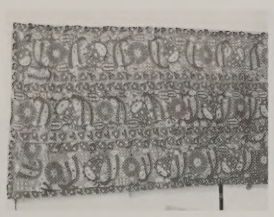
The following two works by **GETA BRĂTESCU** (Romanian, 1926-2018) were stolen in Bucharest, Romania on September 28, 1990. *L18.1971:

297. ***Hypostases of Medea No. 1,*** 1980. Colored thread on fabric. 90 x 60 cm (approx. 35 ⅜″ x 23 ½″). Signed and dated on the verso.

297

298. ***Hypostases of Medea No. 10,*** 1980. Colored thread on fabric. 90 x 60 cm (approx. 35 3/8" x 23 ½"). Signed and dated on the verso.

298



300

299

299. (Flemish, 17th century). ***Tapestry,*** c. 1650. Wool. *L18.541. Stolen from a private residence in Seillans, France on February 25, 2018.

300. (18th-19th century). ***Embroidered Hanging.*** Cotton with silk thread. 114.3 x 203.2 cm (45″ x 80″). *L18.893. Stolen from a private residence in Gainesville, FL on April 24, 2018.

Silver

The following items were stolen from a church in Warnsveld, Gelderland, The Netherlands on December 8, 2018. *L19.41:

301

302

301. **BEREND COOLHAAS** (Dutch, 1691-1764). ***Church Cup,*** 1713. Silver. 20 x 10 cm (approx. 7 ¾' x 4″).

302. **J. A. VULLER** (Dutch, 19th century). ***Supper Cups and a Jug,*** 1884. Silver.

The following two silver items from the atelier of **GIUSEPPE SARAO** (Italian, 18th century) were stolen from a parked vehicle in Dusseldorf, Germany on November 19, 2018. *L18.2197:

303

304

303. ***Dose,*** c. 1730-1740. Silver inlaid with gold, tortoise shell and mother of pearl. 5 x 6 x 6 cm (approx. 2″ x 2 ¼″ x 2 ¼″).

304. ***Snuffbox,*** c. 1730-1740. Silver inlaid with gold, tortoise shell and mother of pearl. 7.01 x 5.49 x 5 cm (approx. 2 ¾″ x 2 ¼″ x 2″).

305

305. **WALKER AND HALL, SHEFFIELD** (English, 1853-1920). ***Warwick Vase,*** c. 1895. Silver. 27 x 32 cm (approx. 10 ⅝″ x 12 ⅝″). *L18.1671. Stolen from the offices of a trade association in London, England on August 31, 2018.

Objets d'Art

306

306. **BLERZY, JOSEPH-ÉTIENNE** (French, active 1750-1806). ***Wax Case,*** 1783. Gold and enamel. *L18.2092. Stolen from an art fair in London, England on September 12, 2018.

The following two items were stolen from a museum in Berne, Switzerland on June 29, 1982. *L18.2098:

307. ***Snuff Box*** (18th century). Gold. 3.3 x 7.5 x 4.5 cm (approx. 1 ⅜″ x 3″ x 1 ¾″). Access. no. 37897.

308. ***Weaver's Shuttle (Navette)*** (French, 18th century). Gold with enamel. 3 x 13 x 4 cm (approx. 1 ¼″ x 5 ⅛″ x 1 ½″). Access. no. 33796.

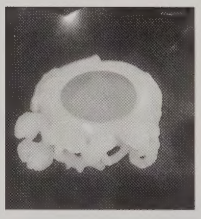
307

308

The following two items were stolen from a private collector in Hong Kong, China on August 9, 2018. *L19.149:

309. ***Ink Well*** (Chinese, Qing Dynasty, 18th-19th century). White jade. 5.08 x 12.7 x 5.08 cm (2″ x 5″ x 2″).

310. ***Pendant*** (Chinese, Ming Dynasty, 17th century). Gold with enamel. 3.56 x 2.54 x 7.62 cm (1 ¼″ x 1″ x 3″).



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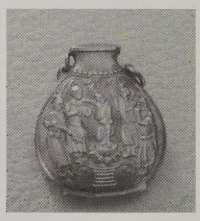
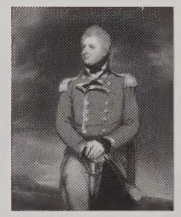


310

RECOVERED ART

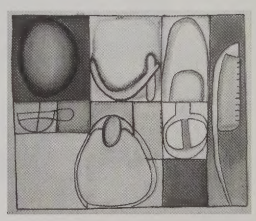
Paintings

53. **HENRY BONE** (English, 1755-1834). ***Portrait of Col. The Hon. Francis Zheler Hood.*** *L09.48. Stolen from a private residence in Hampshire, England in 2008. Recovered with the help of the ALR and sold for the benefit of the insurers in October 2018.



53

54. **EVA HESSE** (American, 1936-1970). ***Painting,*** 1965. Oil on canvas. 87 x 104 cm. *L07.808. (See *IFAR Journal,* Vol. 10, No. 1, no. 4, p. 61.) Reported missing from the artist's estate and galleries in New York on January 1, 1977. Recovered in March 2017.



54

55. **ISAAC ISRAELS** (Dutch, 1865-1934). ***Bois de Boulogne.*** Oil on canvas. Signed l/l. 40.01 x 59.99 cm (approx. 15 ¾″ x 23 ½″). *L14.305. Stolen from a private residence in Amsterveen, The Netherlands on February 18, 2014. (See *IFAR Journal,* Vol. 15, No. 2, no. 31. p. 47.) Recovered in August 2017.

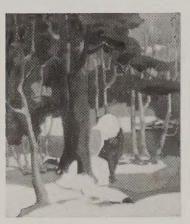
55

*Numbering for the Volume 19 Cumulative Index of Recovered Art began with Vol. 19, nos. 1&2.

The following two paintings, stolen from a storage locker in California on July 29, 2012 (*L12.860; see *IFAR Journal*, Vol. 13, no. 4, nos. 184 and 185, p. 64), were recovered in November 2016:

56

56. **FRANZ A. BISCHOFF** (American, 1864-1929). ***The Sea Grotto.*** Oil on canvas. 33.02 x 48.26 cm (13″ x 19″). Signed l/r.



57

57. **OLAF OLESEN** (Danish, 1873-1953). ***Winter.*** Oil on canvas. 76.2 x 66.04 cm (30″ x 26″). Signed l/r.

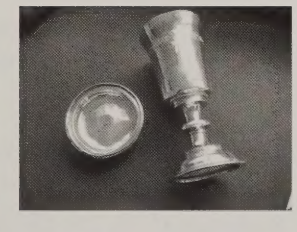
58

58. **PABLO PICASSO** (Spanish 1881-1973). ***Dora Maar,*** 1938. Oil on canvas. 82.5 x 72.5 cm. Inscribed by the artist l/l: 26.04.38. *L099.662 (prev. *L99.357; See *IFAR Journal*, Vol. 2, No. 3, Summer 1999, inside back cover). Stolen from a Saudi yacht in Antibes in March 1999. Recovered in Amsterdam, The Netherlands in March 2019.

59. **PAUL SIGNAC** (French, 1863-1935). ***Le Port de la Rochelle,*** 1915. Oil on canvas. 46.5 x 55 cm (approx. 18 ¼" x 21 ½ "). *L18.1004. Stolen from the Musée des beaux-arts, Nancy, France on May 24, 2018. (See *IFAR Journal*, Vol. 19, Nos. 1&2, inside back cover, item 14). Recovered by police in Kiev, Ukraine on April 23, 2019.

59

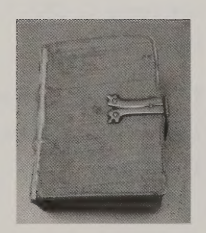
Silver

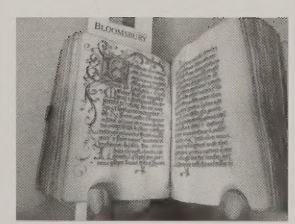


60

60. **Unknown Artist.** ***Elizabeth I Chalice and Paten/Lid,*** 1575. Silver. 19.54 x 10 x 10 cm (approx. 7 ¾″ x 4″ x 4″). With a maker's mark "A" (possibly John Ashmore) in a cartouche. The finial stipple of the paten is engraved "1575 Kyngsham." *L18.363. Stolen from a church in Kingham, Oxfordshire, England on June 11, 2017. Recovered in 2018 after it was posted for sale on ebay.

Books and Manuscripts





61

61. **Unknown Artist.** (German, 15th century). ***Breviary,*** 1494. Vellum bound in silk and wooden boards with a clasp. Ht: 8.9 cm; W: 6.4 cm (3 ½″ x 2 ½″). *L16.553. One of several rare books and manuscripts stolen from an auction house in London, England on April 10, 2016 and recovered with the help of Art Recovery International in 2019.

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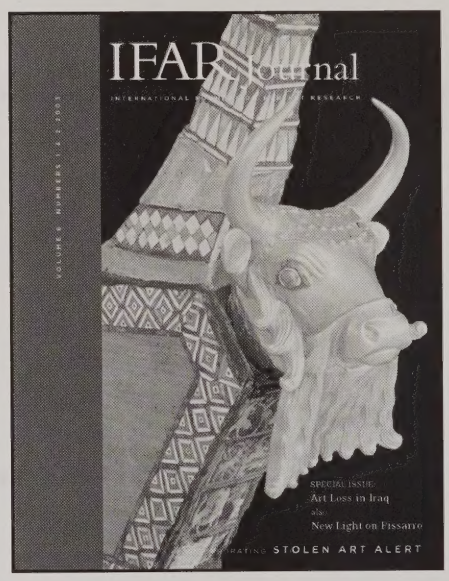

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Paintings

238. **FERNANDO BOTERO** (Colombian, born 1932). ***Rape of Europa,*** 2009. Oil on canvas. 18.01 x 14.5 cm (approx. 7" x 5 ¾"). Signed l/r. *L18.2192. Stolen in Palm Beach City, FL on April 27, 2017.

249. **ANN PIBAL** (American, born 1969). ***CBLT,*** 2018. Acrylic on aluminum panel. 40.64 x 33.02 cm (16" x 13"). *L19.104. Stolen from a New York gallery on January 10, 2019.

254. **VICTOR VASARELY** (French-Hungarian, 1906-1997). ***Axo,*** 1974. Acrylic on canvas. 100 x 100 cm (approx. 39 ⅜" 39 ⅜"). *L18.2150. Stolen in Miami, FL on November 15, 2018.

270. **MARTIN FROY** (English, 1926-2017). ***White Relief,*** 1973. Polyfilla on board. 51 x 63.5 cm (approx. 20" x 25"). *L18.2238. One of three paintings stolen from a private residence in London, England on September 13, 2017. See also items 268 and 269 inside.

271. **MAXFIELD PARRISH** (American, 1870-1966). ***Ecstasy,*** ca. 1920. Oil on canvas. 17.78 x 12.7 cm (7" x 5"). *L19.62. One of three paintings stolen from a private residence in Auburn, New Hampshire on September 17, 208. See also item nos. 272 and 273 inside.

The following two paintings were stolen from a private residence in Houston, TX on February 5, 2019. *L19.288. See also items: 280, 282, 283, and 291 inside.

279. **PIERRE BONNARD** (French, 1867-1947). ***Young Woman in Black Hat,*** 1910. Oil on canvas. 58.45 x 53.57 cm (approx. 23" x 21"). Stamped with signature "Bonnard" (Lugt 3886; u/l).

281. **CHILDE HASSAM** (American, 1859-1935). ***California Hills in Spring,*** 1914. Oil on canvas. 71.15 x 92.08 cm (approx. 28" x 36 ¼"). Signed and dated l/l. Dated on verso.

Prints, Lithographs, Etchings

295. **TAKASHI MURAKAMI** (Japanese, born 1962). ***Moon over Ruined Castles,*** 2015. Screenprint on wove paper. 27 ¾" x 27 ¾". Ed. no. 105/300. Signed and numbered in metallic ink. *L19.116. Stolen in in transit in New York, NY on November 13, 2018. See also item no. 294 inside.

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